# Modes of the Finite

By George A. Blair

Ndala

Copyright © 2003

By

George A. Blair

Ndala 4049 Victory Parkway Cincinnati, Ohio 45229 USA

## Part Six

## Modes of Interaction

#### Contents

Section 1: Rights 1
Chapter 1: Basic human interactions
Chapter 2: History of "rights" and "person"
Chapter 3: Rights and their basis
Chapter 4: Rights claims and titles
Chapter 5: Defending a right
Chapter 6: Kinds of rights
Chapter 7: Human rights
Section 2: Economics
Chapter 1: The basis of economic activity
Chapter 2: The six great myths
Chapter 3: Ownership 113
Chapter 4: Transactions
Chapter 5: Service, cost, and price
Chapter 6: Introducing money into the equation 176
Chapter 7: The entrepreneur and the firm
Section 3: Society
Chapter 1: The necessity of society
Chapter 2: The essence of society
Chapter 3: Laws and sanctions
Chapter 4: Justice
Chapter 5: Authority
Chapter 6: The member
Section 4: Societies
Chapter 1: Introduction
Chapter 2: Marriage
Chapter 3: The family 370
Chapter 4: Civil society
Chapter 5: The complex firm

Section 1 Rights

#### Chapter 1

#### **Basic human interactions**

To begin this discussion on the modes of interaction between human beings, let me point out, as I did in Chapter 6 of Section 4 of the third part, that there are two basic ways we have of interacting with each other. First, since each of us is a person, and therefore a self, creating himself unto his own image and likeness within the limits of his genetic potential, but who can be interfered with or helped in this self-creativity, then we relate *negatively* toward others by *not interfering with them unless they interfere with us or still others*, and *positively*, we *serve others for compensation, or ask compensated service from others*. This is the *economic relationship*, which we are going to discuss in these two sections.

But we also, as I also mentioned in that same chapter, need *un*compensated service from others in order to survive (certainly as children, but also in various ways in adulthood; none of us is actually completely self-sufficient); and therefore, the economic relationship does not exhaust the way we interact with others. This second way of relating to others, which does not (in itself) take into account rights and compensation, is called the *social relationship*. We relate *negatively* to others by means of *threatening* undesirable behavior with punishment (*sanctions*) and *positively* with what used to be called *esprit de corps*, and is now more often referred to as *team spirit*.

I intend to discuss the social relationship in general in the third section of this part; and in the fourth section, I will treat the three "natural" societies: marriage, the family, and civil society.

Before launching into a discussion of the negative side of the economic relationship, that of rights, let me stress what I mentioned in passing in Chapter 6 of Section 4 of the third part in discussing persons: *The economic relation cannot be reduced to the social relation, nor can the social relation be reduced to the economic relation.* 

Neither of these two relationships are "consequences" of the other one, though historically the attempt at derivation has gone both ways. But the economic relation may be said to be based on our *independence* as selves, our self-creativity which depends on nothing but our own choice, while the social relation is based on our *interdependence* because of what I guess you could call the biological nature of our bodies, which must have food that for quite a number of years we simply cannot supply to ourselves, not to mention shelter, clothing, and the other necessities of life. In our fallen state, as I discussed in Chapter 5 of Section 4 of the third part, we can be harmed against our will; and so we need to cooperate in order to see that this involuntary damage is minimized for everyone.

But, as I think you can probably see, this cooperation is for the advantage of "everyone," and may or may not be for the advantage of the person who is actually doing the cooperating—who may be able to handle the situation on his own. A very muscular person who has found fighting gear doesn't need to worry about bullies; in fact, he can be one himself. Why should he bother supporting law and order? If you say, "Well, in the long run he would benefit more by cooperating than by just looking to his own development," you are living in a world of dreams. Perhaps—though I am not sure I want to concede this—if everyone cooperated, then it would be advantageous for everyone to cooperate; but as soon as one person

opts out, it often becomes to a person's personal advantage not to put himself out for others, but to look to Number One.

That means that if you take the economic view of "the real way" people relate to one another: that we are all always "really" looking to our own advantage, and that (apparently uncompensated) cooperation is only engaged in when we see that we are better off for it—then you miss the fact that this will only work for the strong, talented, and lucky; and the rest of us are forced by them to do what really doesn't offset the loss we incur from cooperating. "The system" really works against the people who can't manipulate it, and no amount of tinkering with it is going to make it work for everyone's advantage. The best we can hope to do is get a social structure that minimizes the damage the manipulators can do to the powerless.<sup>1</sup>

On the other hand, if you take it that we're all "one big family" (which exemplifies, as we will see, the social relationship) and "we're all in this together," and assume that people will be inspired by the good of the "team" to work for its benefit at the expense of their own, then you miss the fact that the "team" is supposed to exist for the good of the *members*, not the other way round. It is not an organism, with us as cells in it which live with the life of the whole *rather than* our own individual lives, so that the whole is what

<sup>&</sup>lt;sup>1</sup>If you think it's my opinion, based on this, that this means that the least worst government is the least amount of government, you're right. The more intrusive into various areas of life government becomes, the more easily the manipulators can turn to their own advantage greater portions of the lives of the rest of us. Even the regulations which are supposed to prevent this only exacerbate it, because the laws creating the regulations are created by people subject to the influence of the manipulators. The collapse of Communism, which more or less started when I began to write this book, demonstrates this abundantly.

#### Section 1: Rights

"really" exists and we get our dignity from belonging to it. That makes the individual expendable, for one thing, for "the greatest good of the greatest number," and for another, it denies that what we're all about is setting goals for our individual selves, even while it supposes this, because it expects basically *free* cooperation. The fact that if my body as a whole is healthy, the cells in my body, by and large, are also healthy can't carry over to the relation between society and the individual; because a well-cared-for and even petted slave (who can't in practice exercise any freedom to do what *he* wants) is in a dehumanized condition.

Hence, you can't really bring one of the relationships out of the other one.

#### Chapter 2

#### History of "rights" and "person"

et us, then, look at rights; and first let us see how the concept of rights arose and developed up to where it is at the present day.

First of all, rights were not explicitly recognized as such in ancient times<sup>2</sup> until the political accident of the empire of Rome. It has always been recognized, of course, that there are certain things you can't do to people, and certain things you have to let them do; but the ancient world was much fonder of the close analogy between human beings and animals than we are, even in our post-Christian era. We give lip-service, even in the scientific realm, to being only highly developed primates; but we don't really believe it. The ancient Chinese, Indians, and Greeks believed it. Hence, you train people the way you train animals. Plato, in the Republic, more or less explicitly says this, by developing the structure of his society from observing what is done with guard dogs (and the way he approaches it, the analogy is not simply illustrative, still less a metaphor); and he even talks about "breeding" his upper class members the way hunting dogs are bred-and there is no hint of anything untoward about the comparison. The whole notion in the ancient world of metempsy-

<sup>&</sup>lt;sup>2</sup>Though of course, they existed, generally as something you "earned" or "were worthy of."

chosis is impossible unless there is a continuum of life from the lowest to what happens to be at the top; and so the ancients were even more Skinnerian than B. F. Skinner, and thought that we were animals to be trained.

Now, as to recognizing that there are things you can't do to people, this was something that was not because of some special "dignity" that everyone had, but simply an extension of what we today recognize with respect to animals. It is demeaning to yourself to torture, maim, or otherwise harm animals, not because they have any rights, but because you are destroying in yourself the ability to empathize, which is one of a human being's higher acts. Hence, it wasn't because each person was "independent" or a "self-creator" that you didn't do them harm or even kept from interfering with them; you didn't do them harm because you didn't want to lower yourself below the beasts (who only harm to meet necessities), and you didn't interfere with them when and to the extent to which interference was counterproductive. As even St. Paul says in Colossians, "Parents are not to push their children too hard, or they might give up." This doesn't really recognize the *right* of a child to be self-determining as far as possible (though it's certainly consistent with it), but that if you do take over too much of their lives, you'll have rebellion rather than obedience.

We must remember, as Stoicism shows, that the ancient world regarded everyone as really a slave. We are, they thought, all slaves to the universe, and to what we today would call the laws of nature; and some of us also happen to be slaves to other people. Neither Jesus nor any of his followers had any real problem with slavery, because none of them was thinking in terms of rights or self-creativity. People who read this into the Bible (for instance, who construe its term "justice" as our meaning of the term, when in fact it is what we now mean by "virtue") are projecting our own mentality backwards onto

a way of thinking that just wasn't there—though much of it, as I said, is implicit in what was actually written.

Now then, the concept of *jus* (which is, of course, the Latin basis for the word "justice," and is what is translated as "right") came about in this way: The Romans had conquered the whole civilized world, with all of its cultures and religions and nationalities. In order not to make everything rebellious occupied territory, something had to be done to make these foreigners think of themselves as Romans; and so the practical-minded Roman government decided to offer and even sell honorary citizenship to people who had no connection to Rome by blood. There is an amusing passage in *Acts* where the Roman commander questions Paul about his citizenship. "'Tell me,' he said [to Paul], 'Are you a Roman?'" 'Yes,' he said. 'My citizenship cost me a lot of cash,' said the commander. 'Well I was born one,' said Paul."

It was at this point that the *persona*, the actor's mask I talked about in Chapter 6 of Section 4 of the third part in discussing the origin of the concept of "person," began to be used referring to people. Someone who held the privileges (because that was what they were, rather than "rights") of Roman citizenship wore the "mask" of being a Roman, whether he was actually one or not. Thus, the "personhood" of the person was a legal fiction, in pretty much the same way as the corporation is for legal purposes a "person" who can be sued and so on. The "person" then had the privileges, but also the duties of a Roman, just as if he were a citizen by birth. In all countries up to this time, you were either a citizen (if you were born into the nation) or a resident alien (what we used to translate as "guest-friend"), or a barbarian merely tolerated, or more likely enslaved by the citizens.

So "rights," (what Roman citizens had) were originally privileges granted by the government to those who were not really citizens—of

#### Section 1: Rights

course, the citizens had these things by birth, not by law, and so it was only later that "rights" began to be applied to them too, since in fact what they could do was what the honorary citizens could do "by right." It's interesting that the original notion of doing something "by right" (because of the laws, not because of your birth) is exactly the opposite of what we think of in saying that we are doing something "by right"—because what we mean is that we are doing it just because we are the human being which we are and *not* because of some law in our favor.

As I mentioned, in the early days of Christianity, this notion of the "mask" was taken over to deal with the fact that there was only one God, but that he had three distinct names, and to put the mystery of the Trinity into some kind of linguistically manageable form.

But of course, the notion of the person carried with it the notion of rights; and since, as was clear as early as Paul's letters (which were, as I said in Chapter 4 of Section 3 of the fifth part, the earliest Christian documents), we somehow "became" this Prince who was the *true* Son of God (i.e. not a sort of "legal" son as might be implied by the notion of his being another "person"), then we more or less became "honorary Jesuses," the way the foreign citizen became an honorary Roman. We were, as Paul said, *adopted* sons.

But with the taking over of "person" into the Theological realm, applying primarily now to God, the whole notion of personhood and its consequent rights changed. It was seen in medieval times that we derived our personhood from our identification with God through Jesus, and not really from law; and it was therefore something conferred upon us by God himself, who let us share his own reality.

But God's reality, as a Trinity, was a kind of "social" reality, though much more intimate than a society of distinct beings. Hence, the belonging to the Christian community, which was "one body"

in the sense Paul talked about it, living one life, was seen as a special kind of unity among Christians; and this unity extended in some kind of analogous way even to the rest of mankind as potential Christians and as "called" to the community.

Not surprisingly, then, the notion of "rights" now had to do with this essentially *social* relationship, but a social relationship based on the unity we had with God; and hence, our "personhood" came from our "belonging to" the community which was God's body, and thus our rights depended on our "dignity" as God's children.

In this way, then, "natural rights" superseded mere legal rights conferred from government; but they were still connected with our belonging to a society rather than anything we had as independent of one another.

With the breakup of the Christian community by the Protestant reformation, it was no longer clear where we got rights against each other; because for both the Protestants and the Catholics, the members of the other group were infidels or apostates, and out of communion—and hence, scum to be eradicated. Small wonder that Christians did to each other what they did in the name of Christianity at the time, because your whole dignity and all of your rights were thought not to be yours by your *natural* existence, really, but only by reason of your *belonging to* God's people—and the ones on the other side didn't belong to God's people and were his enemies. Consequently, they had no rights, and were little more than animals, however much *potentially* they might be persons.

A lot of this was more the practice of the times than the theory. By then some very sophisticated thinking had gone on, and it was recognized that in theory non-believers were entirely (because of their immortal souls) different from "brute" animals, and that God's "ultimate purpose" for every human being was sharing his life by contemplating him in heaven; and so every human being had the

dignity that this destiny conferred upon him, even if he wasn't actually a believer at the moment, and didn't *explicitly* belong to the People of God.

Still, rights *were* derived from the sharing of God's personhood; and so it is perfectly understandable to find the people who didn't make hair-splitting distinctions putting into practice the exclusion from personhood and rights of the people who were outsiders. After all, "Let him be anathema!" which meant, "Take his name off the list of Church members!" was the equivalent of "Send him to hell!" in most people's minds—and that notion has carried over even to the present day.

But the Reformation actually planted the seed that grew into our present concept of rights as something inherent in us as independent rather than as members of something. Luther's breaking away from the Church (or his being kicked out of it) and his notion of direct contact with God through the Bible and not some hierarchy deciding what you were to believe, oriented people's minds in the direction of individualism. This also led to a reawakening of interest in physical investigation, rather than a kind of "Theologizing" à la St. Thomas of the writings of the ancients like Aristotle who reported their empirical investigations. Soon, discrepancies were found in what had always been held as fact, and so now there were both Theological and secular reasons for not trusting tradition or listening to what some body of rulers (who didn't do any investigating) decreed were the facts. The whole world began to move to Missouri.

But then, what to do with society and rights? Especially now that kings like Henry VIII were declaring that they were the head of the Church in their country, and were declaring that, since they ruled by divine right (which had been conceded by the medievals), they had the right to put order into what had become the religious chaos which was making a bloody hell of their countries.

Enter Thomas Hobbes. His task could be said to have been the establishment of the divine right of kings without getting into Theological disputes. Hence, instead of basing his concept of society on analogy with the Trinity (which was now in dispute, and was certainly not something the "show me" mentality could establish philosophically—though it was taken for granted that the existence of a Supreme Being was empirically verified), he did a "gedanken experiment" and supposed an initial "state of nature" in which there was no society, and everyone (unlike Aristotle's natural gregarious state of human animals) was on his own.

Since nothing belonged to anyone, everything belonged to each one; and this led to his famous "war of everyone against everyone else," where life was "solitary, poor, nasty, brutish, and short." (That has a ring to it, doesn't it?) People finally realized that this was no way to live, so they got together and decided to give up all their rights to the "sovereign," whose basic job was to keep everybody from trying to kill and rob everybody else. But individuals now had no rights of their own, not even religious ones, and were granted them by sufferance of the sovereign.

Unfortunately, this justified all kinds of tyranny, since by it the king could do what he wanted with his subjects, and no one could complain; and the kings of England proceeded to demonstrate in practice the implications Hobbes left undrawn.

John Locke, the father of modern rights theory, then supposed a different "state of nature" and "social contract." His idea was that each person in a state of nature was gifted by his Creator with independence, a right basically to his self: his own life and liberty, and a right consequently to whatever he transformed by his work. In this way, he was able to assign "natural" name-tags on the things of this world (it was yours if you worked on it) and avoid the Hobbesian universal conflict.

#### Section 1: Rights

But of course, since people *did* infringe upon the rights of others, a social contract was necessary, in Locke's view, to protect the rights of the people; so they got together and *appointed* a sovereign, who governed with their consent and at their sufferance; they as a whole retained the basic power that Hobbes said had been given up, and were able to depose a sovereign who governed contrary to their will or violated their inherent rights. It was this, of course, that formed the basis of the American Declaration of Independence.

Notice that, with Locke, the social relationship is now *derived* from the economic one; exactly the opposite of what was held before the Renaissance. We are independent "by nature," and in order to preserve and protect this independence, we form a society with this function, *not* with the function of doing what is "good" for us or giving us benefits.

We will see in subsequent chapters that I think this function of civil society is in fact the correct one, but the foundation I would put it on is different from Locke's. For me, as I have said, notably in Chapter 10 of Section 5 of the first part, there is no objective meaning to what is "good" for a person, and therefore it is up to each person to define what is "good" for him for himself (by making choices). The only thing that can be objectively determined, as I said in Chapter 3 of Section 7 of the fourth part, is *damage* or *harm* to a person (using the notion of dehumanization and the "zero" established for humanity in that culture). Hence, the only thing that government can legitimately do is see to it that no harm is done any citizen; it has no business deciding for itself what people should be doing with their lives or what benefits they ought to have.

Note, by the way, that if what is good for a person is something objective that could be known, Locke's view of government as *merely* protecting the rights of citizens collapses. Presumably, wise people could know, on this condition, what is good for a person better than

he can know for himself; and so if government is by experts in "goodness-theory" (as it certainly should be in this case), why should government stop at merely protecting people from damage, and not go on to "protect" them from missing out on greater benefits by ignorantly choosing lesser ones?

This paternalistic notion of government has always been with us, even in our own country; it is assumed that the people in Washington know better what is good for the poor than the poor themselves (the poor ignorant clods); and so they proceed to dump over their heads things that have in fact guaranteed that they will stay poor generation after generation. This is not to say that there aren't ignorant clods among the poor (often created by government's messing with education); but this still doesn't mean that someone else knows better what is good for these people than they do, because there is simply no meaning to what is good for them beyond the goals they freely choose. Where you draw the line between preventing damage and forcing someone to do what is alleged to be "objectively good" for him is not, as I have said in Chapter 3 of Section 7 of the fourth part and Section 2 of the fifth part, easy to find; and so we do need value theorists at least as consultants in government; but value theorists who think with their intellects and not their emotions, especially not with that condescending emotion called "compassion."

But to return to Locke, even though he hit upon something that was profoundly true about human nature, and which is, upon my analysis, the primary aspect of what it means to be a human being, his notion and Hobbes's about a "state of nature" where everyone was on his own is simply impossible, and not just in practice but in a sense in principle.

Both Locke and Hobbes suppose that there are *adults* in this state of independence from everyone else. But how did these people ever

get to age five, let alone to adulthood? If everyone in a "state of nature" is independent of everyone else, then obviously infants and young children are just as "on their own" as adults are—with the result that there are no adults, because the kids all starve.

And this ignoring of children in thinking of the foundation of rights has persisted to the present day. John Rawls's book *A Theory of Justice*, where "justice" is defined as "fairness," bases it on the "principles that free and rational persons concerned to further their own interests would accept in an *initial position of equality* as defining the fundamental terms of their association" [Italics mine]. The idea is that rational people would see that this "original position of equality" would be most likely to advance the good of each one. Rawls makes it clear that "this original position is not, of course, thought of as an actual historical state of affairs, much less as a primitive condition of culture. It is understood as a purely hypothetical situation..." Rights are assigned on the basis of this initial equality, because if you're rational you'd agree that here's where you're most likely, in this uncertain world, to get where you want to be.

All well and good, but what do we do with the children and the idiots? Are children to be regarded as equal with *children* initially, or as equal with everyone? That is, are children to be allowed not to educate themselves if they see no point in it, just as adults are not to be forced to get Ph. D.'s if they don't want to? Should children be allowed to smoke and drink and have sex, in the sense that adults think it is a violation of their rights if these things are forbidden? And the same questions can be raised about idiots.

If rights are *based* on this agreed-on fiction of equality for everyone at starting, then obviously either only those who made the agreement have the rights (which Rawls rejects—understandably, because you can't renegotiate the contract every generation), or

everyone is to be initially equal and to have the same rights, whether they are in fact equal or not, because that was the agreement: irrespective of individual differences, everyone is to be *treated*, initially, *as if* equal. It would logically follow that children would have to be given the same rights as adults—which would once again mean that there would be no adults. Children can't compete in a *quid pro quo* relationship, and would starve; and they must be forced to do things which adults must not be forced to do, precisely because they can't be expected to understand the consequences of their acts.

The point of all of this criticism is that to base rights and society on *independence* refuses to recognize that, though we are basically self-*determining*, we are *not* really independent. We must, as I said, receive uncompensated service from others, and must for a time at least be forced to do what we don't see the point of and don't want to do.

That is, Aristotle was right: human beings are by nature *social* animals, and need each other to live; and hence, we are not these atoms that happen to connect with each other as Hobbes and Locke and even Rawls suppose.

I don't want this critique to lose sight of the fact that the "independence" these people stressed is a slight deviation from what is a very basic truth about human beings: that we are self-determining; and a very basic truth about reality: that goodness is not something objective, even though harm is. It is when they try to derive society (or even rights) from some kind of free agreement among people and suppose therefore that it is not rooted as much in being human as "independence" is that they make their mistake. *Both* the self-determination *and* the interdependence of human beings are ineradicably given in human nature, the first in our nature as spiritual and the second in our nature as living bodies which have to maintain a super-high energy level in the face of an often hostile environment.

The difficulty that social theories and rights theories have come across in trying to derive one of these relationships from the other is clear evidence to me that the two are distinct from one another.

#### Chapter 3

#### **Rights and their basis**

traditional Scholastic definition, whose meaning, however, is to some extent modified by me), and then restate more at length what I mentioned in Chapter 6 of Section 4 of the third part about what the actual basis of rights is.

#### A right is a moral power to do something.

It is a *moral* power in the sense that a right does not necessarily imply the *physical capability* to perform the act, but merely these two things: (1) It is *not morally wrong* for you to do (or attempt to do) the act in question, and (2) *no one may morally stop you* from doing it.

For instance, if you own a piano, you have a *right* to play it, whether you can actually play the piano or not. If you sit at the keyboard and start tapping out notes, then this action on this piano is not morally wrong (supposing no one else's right is violated by, e.g. playing it at three in the morning, as I mentioned in discussing act and situation in Chapter 7 of Section 1 of the fifth part), and that "no one has a right" to try to prevent you from playing it.

Essentially, then, the definition of rights above means that non-interference with the acts in question is a *moral obligation of* 

#### Section 1: Rights

*everyone*. I have never understood how moral relativists can assert that morality is a purely personal matter (and therefore I only have moral duties if I think I do) and in the next breath assert rights and get very angry with those who violate rights, even when those people assert that *they* think they're behaving perfectly morally. Moral relativists, as I said in Chapter 3 of Section 1 of the fifth part, universally demand non-interference as a moral duty incumbent upon everyone, whether they recognize they have this duty or not.

Obviously, there is a lot of fuzzy thinking going on in this area; and so we had better be very clear what we are saying and that we have some factual basis for it. If a right imposes an obligation on everyone else (and therefore *restricts* everyone else's freedom to act), you can't just claim a right whenever you happen to feel like it.

But before getting into that, why can we claim rights at all?

And here is the reason I gave in Chapter 6 of Section 4 of the third part. The *basis of rights as such* is *the fact that we are persons*. That is, that we are free, self-determining beings (selves) who are in a situation where (a) our self-determination can be affected by the actions others take in determining themselves and (b) our own actions in determining ourselves can affect others' ability to determine themselves.

I will get into why this self-determination establishes rights in general in a moment. But let me remind you of what I said in that same Chapter 6, that a human being is a self even when he is not *actively* choosing (exercising his self-determination) and even when he is not at the moment *capable* of doing so, such as when asleep or knocked out, and that this includes people in so-called "permanent" comas, because some have come out of them—which indicates that they were the same as knocked-out people and hadn't changed their nature as human (which nature is a self-determining one), but simply couldn't, because of the injury, manifest it. And of course, the

#### Part 6: Modes of Interaction

unconscious state of the fetus is a coma from which he very shortly emerges, and so he is a self also. But since humans in these states obviously can be interfered with (e.g., they can be killed), they are persons. Hence, *a human being is a person for his whole bodily life*. After death we lose our rights by default, so to speak, because, though we are selves in that we are still self-determining (albeit in equilibrium) and persons in the sense that those we care about are within our consciousness as objects of our eternal knowledge and happiness (or, I suppose, misery), we can't in fact be interfered with or affected in any way by anybody's actions.

So (a) rights are based on our nature as self-determining beings who *can* be interfered with by others' self-determining acts, and (b) since we have this nature from the moment of conception and being organized as human, we have rights from that moment until the blessed moment when we can't in fact be interfered with.

Now then, the *reason* why this self-determination is the basis for the *obligation* not to interfere with anyone *else's* right to act is this: In the first place, I am not a self-determining being if I cannot determine myself *in practice*. Self-determination doesn't mean wishful thinking; it means being able to *make* yourself into what you want. As I mentioned, our self-determination is *limited* by our genetic potential; and so we can't make ourselves into *anything* we want (this is the basis of what is morally right and wrong, as I said in Chapter 6 of Section 4 of the third part and Chapter 4 of Section 1 of the fifth part); but if all you can do is imagine yourself as different and wish you were different, then this is a purely mental exercise, and choice is determination of the *whole* person, not just the mind.

Secondly, I cannot determine myself in practice if I can be interfered with from outside. Now some of this interference is not preventable, given our fallenness and the world we live in; because viruses don't recognize that they're interfering with us when they

#### Section 1: Rights

give us polio or influenza, and tigers don't seem to have an instinct that says that we are not to be looked on as tasty tidbits. But you can't *tell* a tiger, "Bad kitty! Leave me alone," because he can't understand you or even choose to do so even if he saw you were averse to what he was doing. The non-human world has no self-control (in the sense that we do); and therefore it is going to do what it is going to do, and all we can do is foresee dangers and keep out of their way.

But, thirdly, the *human* (and angelic) world is different, because these objects are selves, and can choose either to interfere with my self-determination or not to interfere with it. Here I can *point out* to these others that self-determination *implies* not being interfered with and that they as self-determining want no interference with their self-determining acts; and *therefore*, *it is inconsistent with them as self-determining persons to use their self-determining acts in such a way that they interfere with others' exercise of their self-determination*.

That is, if you don't want others interfering with you, then you can't interfere with others; otherwise, you give them grounds for interfering with you whenever they can get away with it, or whenever it is to their individual advantage.

## Conclusion 1: It is the *personhood* of those with rights that is the basis of their rights, not their "equality" with others.

To use "equality" as the basis of rights is to build them on a very shaky foundation. You either have to say, based on this, that we are all in fact equal, and fly in the face of the evidence of the manifest inequality in people (in what verifiable sense is a person in a "persistent vegetative state" who can only breathe the "equal" of Einstein at his peak?), or you have to try to *make* everyone "equal" by reducing everyone to the lowest common denominator; or finally,

you have to define "equal" as "qualitative sameness" by using the phrase that the person on the respirator is "just as much a human being" as Einstein—in which case "greater" and "less" are simply defined into meaninglessness, which means "equal" also is.

Further, if you take this last alternative (which most people who talk about our "equality" as humans do), what do you do if some extraterrestrial person steps out of his flying saucer and starts talking to us? He clearly wouldn't be "the same" as we are, and might be ten times as intelligent as the best of us (which from my experience wouldn't be all that difficult); and so he's neither the same as nor equal to us. Then does he have rights, and more importantly, do we have rights against him? Only, now, if we're "just as much a *person*" as he is. So even though we're not the same in nature, and his nature is essentially superior to ours, you would have to say that we are "equal" in the mere *fact* that we are both persons, and persons have rights.

In other words, "equal" as the basis for rights supposes a *property* all those beings share, even though they are unequal in every other respect: the property of being self-determining and related to others. And they don't even have to share this property *equally* in order to be "equal" in this sense, because children have rights even though they aren't *as* self-determining as adults; and people who are unconscious have rights, though clearly they can't determine themselves at all at the moment.

What all this amounts to is that, in order to base rights on "equality," you have to define "equality" in such a way that it has nothing to do with equality, but in the mere fact that a self-determining being is self-determining.

And, of course, if you *do* base rights on equality, then there are these disputes about its being permissible to kill people who aren't "really equal" to anyone else, using the equivocation of the term (or

rather attempting to use it in a meaningful sense) as Hitler did toward the beginning of the last century and we were doing at the end of it (prating about "the quality of life" and "life as a value") to excuse the most horrendous acts of wholesale slaughter of human beings by self-righteous human beings.

Jefferson was not God, and wasn't even a very good philosopher—not that he pretended to be. But be that as it may, when he wrote that it was "self-evident" that "all men are created equal," what he meant by that is that there are no natural classes, in the sense that you are one of the upper class "by blood" and have rights that the lower classes don't have. We have rights, he thought, because we are human, not because our parents were dukes or earls.

And this is true, but not *because* we are human, but because every human is a *person*. Jefferson was right in saying (following Locke) that rights are *not* based on belonging to some group, implying that those outside the group don't have them; but he was wrong if he meant that this implied that we are all equal, or that rights are something that is inherent in the humanness of humans as such (which would exclude non-human persons).

It follows from the fact that rights are based on personhood that

## Conclusion 2: Non-persons such as animals do not have rights.

The reason why we shouldn't exercise deliberate and gratuitous cruelty toward animals is not that they have *rights* against us, but more or less on the grounds that the ancients held for not doing harm to other people: if you do so, you are "lowering yourself" beneath the level of one who can sympathize with others. There can be no kind of reciprocal agreement with animals, and rights imply reciprocity: I'll let you alone if you let me alone.

Those who take our moral obligation toward animals as grounds for assigning them rights don't realize the implications of what they are saying. If dolphins have a "right" not to be caught in tuna nets, so do tuna. If dogs have a right not to be poisoned, so do rats, cockroaches, and spiders. If dogs have rights, then they certainly have the right not to be neutered (which is, after all, a violation of their nature as reproductive), or for that matter, to have their sexual activity restricted against their "will." The *only* way you can do anything which would restrict the exercise of a right of a person is in defense of an equally serious right, as we will see; which means that you can't tie a dog up unless you have reason to say that the dog *will* violate someone's right if let loose.

Generally speaking, those who claim rights for animals don't have any real reason for doing so; it is either that "they're just like us," which allows them to exclude inconvenient things like lizards and worms and maggots as not being like us; or that they're furry and cute, which also allows for excluding tuna and barnacles and wasps.

If you're going to say that animals have rights, then they can't just have the rights *you* want to assign to them; the whole point of rights is that, since they impose obligations on *everyone*, then it can't be the "everyone" who assigns the rights to those who have them, or there would be precious few assigned. (Besides, in this case, if there is a "consensus" that animals—or Blacks, or fetuses, or women—don't have rights, then they don't have them.) No, it has to be the beings that *have* the rights who can *demand* that everyone, even those who don't think they have them, respect them, and can do things like put in jail those who aren't willing to do so. Hence, if animals have rights, they have all the rights that we have as human (life certainly, physical integrity, freedom, etc.), and not just the right not to be tortured or maimed. But I know of few "animal rights activists" who would be willing to grant all of them in practice.

#### Section 1: Rights

But of course, the real question is what you would base the rights of animals on, and there is nothing that allows us consistently to say that they have them, because in fact they aren't persons and aren't self-determining, and so wouldn't know what to do with their rights if they had them, because they have to follow the strongest drive at the moment anyway.

Therefore, given that they don't have rights, people can use them, make slaves of them, confine them, neuter them, cut them open alive, and so on if they have a valid reason for doing so. These acts violating the natures of the animals don't have to be necessary, in the sense that they are an act blocking some kind of attack on oneself or other persons, but simply justifiable as hypothetically necessary for some purpose. If, for instance, you want to find out what makes one gerbil live on a 20-hour day cycle when the other ones live on a 24-hour day cycle, then you can breed this gerbil with others to find out if his "biological clock" is genetically determined; and if you have reason to believe that the timing mechanism is some small area of the brain, you can excise this area and transplant it into a normal gerbil to see if the normal one will shift his length of day. The knowledge to be gained provides a justification for the violation of the animal's integrity; the researcher is not being gratuitously cruel, and the assumption is that the operation is made under sedation, and as little damage is done as possible consistent with fulfilling the goal of the research.

Any damage that is done or pain that is inflicted that could have been avoided and the end still gained is then gratuitous cruelty, and damages the one who inflicts it by making him callous to the pain his actions cause, not because the animal has a right not to have the damage inflicted. In the latter case, *no* gain, however great, could justify *any* damage done. You can't balance off a moral evil with a human good.

But there is another conclusion we can draw also from the fact that rights belong to persons:

## Conclusion 3: Non-existent beings, such as future generations, have no rights.

When we talk nowadays about the despoiling of the environment and the effect it has on future generations, we hear that we are "violating their right to a decent place to live." But we don't even know whether there will be any future human beings to live on this planet, so how can "they" have any *rights* against us? It seems fairly clear that you can only have your self-determination interfered with if you exist; and what are now imaginary people (possible human beings) don't have rights.

If possible humans had rights, then every sperm and every ovum (which is certainly more concretely a "possible" human being than that abstraction called "the people living in the twenty-second century"—forgive me if you're reading this in the twenty-second century, but you're pretty far into the imaginary realm as I write this) has a right to live and develop into a human being with a "decent life style." And since rights imply obligations on everyone, then everyone has a positive obligation to preserve and nurture every sperm or ovum he can protect.

But the fact is that a sperm, as not *being* a person, cannot have its self-determination interfered with, for the simple reason that it has none. The fact that it is potentially a person doesn't really count for any more than the fact that the carrot you are eating will become part of you, who have rights; and in that sense it is potentially a person also. Those who attribute rights to fetuses *on the grounds that* they are potential persons have no grounds in fact for attributing the rights to them, any more than six-year-olds have the right to drive a

car on the grounds that they are "potential" drivers.

Now we *do* have an obligation to future generations to see to it that they have a decent place to live; because it is likely (unless we mess things up further) that there will be such people, and we are able to foresee the future and the effects that our actions will have. Thus, to do things which would make the world of the twenty-second century uninhabitable means that we would be *willing* to do damage to those people who *would be likely* to exist at the time, should there be any.

In other words, the grounds for our not damaging these hypothetical people is not that they in fact have any rights against us, but the fact that we can't *know* that there *won't* be people who will be harmed by what we do and have *reason to believe* that there will be people affected by our actions. In that case, to choose the action based on the doubt is immoral, analogously to saying that you didn't know the gun was loaded.

To make the principle involved here something closer to home, a man who chooses to drink and then drive home, knowing that the drinking will impair his ability to drive and make him a menace, *is willing* to kill people, because he knows that this is what can happen from the course of action he is taking. If he gets home without actually killing anyone, he's just lucky, and it's not his fault. So even though there isn't actually anyone killed, the man is morally speaking guilty of murder (supposing he has consciously been aware of this possibility when he made the choice to drink at that time), because he said, "If it happens, so be it." Obviously, the person he didn't kill doesn't have any rights claim on him; but he is morally guilty nonetheless. In the same way, even though future generations don't have any actual rights against us, because what doesn't exist can't possess rights; still, we have to act in the same way as we would if they existed and did have their fundamental rights, or we would be

willing to do them damage if and when they do exist.<sup>3</sup>

The third thing that we can conclude from the fact that rights are based on personhood and imply mutual respect of rights is the following:

## Conclusion 4: No one has a right to do anything that violates any right of anyone else.

Since rights by their very nature impose the obligation to respect them on everyone else, it follows that it contradicts what it means to have a right if you claim a right to do something that violates someone else's right. As the proverb goes, "Your right to swing your arm stops short of my nose."

But aren't there rights that are more important than others, so that my exercise of my important right supersedes your exercise of your insignificant one?

No. *No* right *is superseded* by any other right; if it were, then it wouldn't be a right at all, because the person who had the "greater" right could simply ignore it, and then in what sense would one have the moral power to *do* the act in question, when it could be stopped by someone else? One person's having "more important rights" than

<sup>&</sup>lt;sup>3</sup>Note, by the way, that if we do leave a polluted environment that kills people, they don't have any rights claims against us, because (a) they couldn't protect themselves against what we are doing, because we'll be dead and our actions will be irrevocable, and (b) what they would be confronted with is a *state of the environment*, not the action of a human being; the fact that it is an effect of the actions of previous generations is not really relevant. It is this claiming redress from past generations that is part of the "reverse discrimination" problem nowadays, as if the present generation of Whites must somehow make restitution for damage done by our ancestors, when we had no hand in the violation and therefore couldn't have prevented it if we wanted to. This is not to say that, insofar as Blacks are *now* having their rights violated by actions Whites are *now* performing, this inequity cannot be reversed.

another would also assume that "importance" is something objective, and there are no grounds for such an assumption, as I said in Chapter 2 of Section 7 of the fourth part.

Of course, it is true that when rights come into *conflict*, then morally speaking, one person must yield the exercise of his right when that yielding will do him *less damage* than the other person's yielding the exercise of his right, using the Principle of the Double Effect I discussed in Chapter 7 of Section 1 of the fifth part. Thus, if you are in my way, I can't knock you down to get to where I want to go, just because I have a right to walk on the sidewalk. If I yield to you, no damage is done to me except inconvenience and a certain loss of time; if I knock you down, physical damage is done to your body. Similarly, I can't morally shoot a robber to keep him from taking my wallet; I could only shoot him to keep him from killing me.

But here it isn't that one right *yields* to the other; it's that *you can* only keep the damage to the other out of your choice if the damage done to you by not in effect violating his right is greater or at least equal.

Hence *rights are absolute*. They do not even yield to other rights, still less to some concept of "greater good" or "higher importance."

#### Chapter 4

#### **Rights claims and titles**

But since rights *restrict* the activities of others by creating in them the obligation not to interfere, then the others can't do whatever they please—which contradicts the fact that they are self-determining also.

That is, there has to be something more to a rights *claim* than, "I want to do that" to offer to someone who wants to do something that prevents me from doing what I want to do; because he can also say, "But *I* want to do this other thing, and therefore, you can't do what you want." To give an example, suppose Johnny wants to play with a toy that Jimmy wants to play with; but it's not one that both can play with at the same time. If the fact that Johnny *chooses* to play with it establishes that he has a *right* to play with it, then this prevents Jimmy from playing with it; but Jimmy has exactly the same claim as Johnny, because he wants to play with it.

If your right to do something stops when it violates anyone else's right, then obviously *neither* of them has any right to play with the

4: Rights claims and titles

toy, and so it just has to sit there unplayed-with, and since both have rights to *do* something, then neither can in practice do it. But that is absurd. A right is supposed to confer a *power*, not an impotence.

And of course, the boys' mother solves the problem by decreeing, "Johnny, you can play with it now, and in an hour, you'll have to let Jimmy play with it." But she couldn't do this if Jimmy has a *right* to play with it now, because she'd be violating his right on the grounds of the "greater good" of their harmonious relationship.

Thus, the claim of a *specific right* must be based on something more than mere personhood and self-determination, or conflicts could not justly be resolved. I have already given a hint as to what the solution to this is above in discussing why rights are not superseded by "more important" ones; the answer lies in the damage done when exercising a right that conflicts with another one.

But before I spell this out further, let me state that, since rights *are* based on self-determination:

Conclusion 5: Any person must be allowed to do whatever he chooses, as long as (a) he is capable of making a rational choice, and (b) what he does does not come into conflict with anyone else's right.

A person, as the one who by his choices *creates* what is "good for him" must not be forced to do what anyone else thinks is "good for him." Hence, he must be allowed to do what he pleases with himself; which means that he has the *right* to do what he pleases with himself.

This extends even to doing himself damage—even severe damage, even killing himself—if he knows what he is doing and is in fact carrying out his free choice (i.e. if he isn't either psychotic or neurotic, according to the definitions given in discussing the sense faculty in Chapter 5 of Section 2 of the third part). That what he is

doing to himself is immoral under these conditions is true; but beyond informing him of what this means and implies for the whole of his life, no one may morally prevent him from doing with himself what he pleases—*as long as* no one else is harmed by it. If he chooses to drink himself to death, and he has a wife and children who depend on him, then his actions will in fact do them damage, and he can be prevented from carrying out his choice. But if no one else is affected by it, then he can do what he wants; otherwise, he is not a person but a slave.

Of course, it is rare that any human action has an effect on absolutely no one but the agent; but it might not do any *meaningful* damage to another person, in which case, the agent must be let alone to do it. There are some things, like taking drugs or reading pornography, that society can legislate against, even though, in a given individual case, the harm the person does to himself may not spill over onto others; but if the practice is allowed, then damaging effects on others can occur from those who do not have enough self-control to contain their violence to others to mere fantasizing, for instance. But we will see this when we talk about society and its right to demand a certain amount of uncompensated service from its members in order to achieve its common goal. But even in this case, society has to establish more than just a prima facie case that actual damage to others beyond the agent is likely if the practice is not forbidden by law, not a case that if the law is passed, people will be less likely to harm themselves. I find it difficult to justify, for instance, laws mandating seat belt use by people in automobiles (and I say this as a person who always buckles his seat belt as soon as he gets into a car). Neither society nor anyone else has any business forcing a person to do what is "good for him" or to avoid what is bad for him.

But all of this evades the issue of how specific rights that warn

other people, "Leave me alone in this!" can be claimed. And the answer is that a person can claim a right to do a specific act if he can show that damage to his **present** existence will come from not being allowed to do it.

"Damage" in this case is to be taken to mean "Some contradiction of the person's present reality."

This is, as I warned in talking about dehumanization in Chapter 3 of Section 7 of the fourth part, a bit broader than dehumanization itself, because damage is done to me as a licensed driver in Ohio if I am prevented from driving a car, because it contradicts the contract I entered into with the State of Ohio when I passed my driving test and paid for the license. Clearly, this agreement, as I said in that chapter, does not have anything to do with my humanity as such; but it is a *real* aspect of *me* as a concrete individual—and in fact as a concrete manifestation that it is a real relation, I have in the little slip of plasticized paper that is called my "driver's license."<sup>4</sup>

Conclusion 6: The basis of any claim to the right to a specific action is some aspect of the person's reality which would be contradicted if he were not allowed to perform the action.

First, to clarify something before we go on: When I say the "right to a specific action," I include in this the right to *avoid* having to do something as well as the right *not to have some action performed upon me*. So the "action" also includes "reaction" to some other person's

<sup>&</sup>lt;sup>4</sup>The license, strictly speaking, is actually the permission to drive, or the right itself; the paper is, as we will see, my *title* to the right.

action, and does not necessarily mean getting up and doing something. I might have the right to "just sit there" without interference, if, say, I am sitting on a park bench. Even "doing nothing" is some kind of act of mine (because to do absolutely nothing would be to go out of existence); and so specific rights can always be stated in reference to what it is they permit as if it were an action.

Now then, a definition:

# The *title* to a right is the aspect of the person which would be contradicted if the action were prevented.

Thus, if you are going to claim a right, you have to show that you have the title to it: that there is something about you *as you make the claim* that would be *damaged* if you were not allowed to perform the act you claim the right to perform.

It cannot be that you merely *want* to perform that act, or that the act is one of your *goals*. We do *not* have the right to achieve our goals, as I said in Chapter 3 of Section 7 of the fourth part; we simply *want* to achieve them, however important the achieving may be to us.

And the reason that we can't claim a right to achieve our goals is that if we could, we would be *restricting others' present activity on the basis of our future reality which does not now exist.* We would be like the "future generations" which supposedly have rights against us. Why should a person lessen his own reality so that I can enhance mine? I showed above that if rights could be claimed on the basis of what we *wanted* to do (which is another way of saying on the basis of what we wanted to *be*), then nobody would have the right to do anything that conflicted with what anyone else *wanted* to do.

I said that if you are going to claim a right, you have to show your

title to the right. This should be obvious, because when you claim a right, you are *ipso facto* imposing an obligation on others to let you alone; and they need evidence that their actions must be restricted before they could rationally think they *had* to restrict them.

## Conclusion 7: The title to a right must be something that others can observe, so that they can know that the possessor actually has the right.

This does not mean that we have to go around carrying little papers—though this is necessary in some cases, as with a driver's license, or the certificate of title to an automobile if you want to sell it. But, for instance, it is observable to others that you are a living being and that you can't act if you aren't alive; and so that fact itself is a title to your right to life. The fact that you have eyes is your title to the right to see. The fact that you are a human being is your title not to be enslaved (because even those who are not sophisticated would know that human beings are like themselves, who have a right to liberty, without necessarily observing the personhood of a person as such).

The point, really, is that the title has to be some *objective*, *discoverable fact* about yourself which shows that your reality (including some relation of yours to another object) is contradicted if the act you have a right to is prevented. Sometimes it is incumbent upon the possessor of the right to establish that he has the title; sometimes he doesn't have to do this, and the burden of establishing that he *doesn't* have the title is upon the person who would prevent the act in question.

Why this last? In the case of rights whose title is our common humanity, then a given human being does not have to *prove* that he is "really" human and therefore has the right, say, to life or liberty;

### Part 6: Modes of Interaction

the burden of proof is on those who would deny it to him. For instance, a hundred fifty years ago, liberty was denied Blacks in our country on the grounds that they looked different from "us," and therefore (as some said) "obviously weren't human." The slave owners held that if the Blacks were to claim the right to be free, they had to prove that they *were* human; but this was a sophism. In order to deprive them of freedom, the owners would have to prove that they weren't human. The same thing happened with the Jews in Hitler's Germany. There were "scientific" theories at the time that the only "real" humans were Aryans, and that Jews were a different species, and consequently were like animals-or rather, *were* animals. But how could a Jew have proved to the Germans that he really was a human being? The same is happening with human fetuses today. It need not (though it can be) proved that they are human beings; if they are to be killed, it is enough that there is a *doubt* whether they are or not, because to be willing to kill someone who might be human is to be willing to kill him if in fact he is human, and morally speaking this is to be guilty of murder, and it would be so even were the thing you killed not a human being, as we saw in discussing an unclear conscience in Chapter 6 of Section 1 of the fifth part.

But in cases like the right to drive a car or the right to vote, where a person might have it or might not, and there is no presumption either way, then it is the task of the person who claims the right to show the title proving that he has it, because *he* is the one who is making demands on other people.

Before getting into the various kinds of rights, let me say a few words about who we have rights *against*.

In one sense, we have rights against *everyone*, because no one may morally violate them; but it is a little silly to say that I have the right against someone in Nepal not to be locked out of my house, because it is physically impossible for him to lock me out of my house.

# Conclusion 8: We have rights against the people who *in* practice can violate the right.

It might seem a little otiose to draw this conclusion, but it isn't as superfluous as it might seem. For instance, at the time I am writing this, over forty million Americans have been killed in the most barbarous way in the abortion mills of our country since the Supreme Court passed its infamous decision—and I know this, and have not done any more than said and taught that it is wrong and must be stopped, and voted against those who support abortion. Am I guilty of violating their right to life? No, because (a) I am not conniving in the violation, either by supporting abortion actively, or by not doing anything at all to oppose it; and (b) there is in practice nothing more that I can do that would be likely to save any more lives. Hence, since I am in practice powerless to stop the killing, none of the fetuses has a right against *me* not to be killed.

That is, the fact that I am a member of a *community* which is violating a right does not mean that the people in that community whose rights are being violated have a claim against me personally, as long as I am not part of the conspiracy to violate the right.<sup>5</sup> But in order to establish this, I must do *something* in opposition to the

<sup>&</sup>lt;sup>5</sup>This is the fallacy in the position of Blacks of the present day who are demanding "reparations" from those whose ancestors deprived them of freedom two hundred years ago. In spite of their not having the chance that White people have had because they nor their ancestors were never discriminated against, if the discrimination is not going on *now* and by people whose actions can be pinpointed as violating the present Blacks' rights, they have no claim on anyone.

violation.6

But the question of who the right is against becomes clearer when we talk, not merely about others *refraining* from doing damage, but others' *having positively to do something* in order to prevent damage.

For instance, my children had a claim *against me and my wife* for their support until they reached adulthood, and not against my neighbors nor against the city nor the country. The reason for this, obviously, is that we caused them to exist, knowing that they would need support for a long time; and so we are the ones singled out by our acts of sexual intercourse to be the ones against whom the claim of support is directed.

Similarly, a person who enters into a contract with another person has a right against that person to its fulfillment, and not against anyone else. In general, when a right involves the fact that someone else must actually perform an action helping the claimant, then the one or ones who must perform the action must be specifiable. No one has a right to have everybody in the world help him, if for no other reason than the fact that not everybody in the world would be in a position to be able to help him.

The current imputation of guilt to those in affluent societies for the miseries of those in poor societies is based on this false idea that those whose rights are being violated have claims on those who cannot in practice prevent the violation (though in theory they might be able to do it). It makes for a comfortable kind of situation: we can all wallow in guilt-feelings for living a decent human life when others can't, while at the same time, being guilty of everything, we are not

<sup>&</sup>lt;sup>6</sup>In the case of present-day Blacks, what happened to their ancestors is not relevant to rights claims. White people need not do anything today to repudiate those violations or "make up" for them, because they had no hand in the violation, and cannot in practice correct the violations that actually happened, since they were over long ago.

specifically guilty of anything; and so, like Mrs. Jellyby in *Bleak House*, we can ignore our own children's real rights against us while we deplore the starving in Borioboola Gha.

### Chapter 5

### Defending a right

ow then, suppose you claim a right and show your title to the right, and someone you have a right against refuses to recognize the validity of your title, and proceeds to violate the right. Can you stop him from violating it?

This isn't as simple a question to answer as it seems, because if you take some action to stop him, then in all probability you are going to be doing him some damage, and so you will be in the position of violating a right of his in order to protect a right of yours, which makes you morally the same as he is—worse, it would seem, because you are violating a right in the name of not having the other person violate a right, which certainly seems self-contradictory.

On the other hand, if you simply say, "But if you take this from me, you are violating the right I have to it, and you are being immoral," he can answer either, "I don't care," or "I simply don't recognize your claim to the right to have it," and proceed to violate your right anyway. But since people honestly differ on what rights are and what the basis of rights-claims are, and since some people are not bothered by the fact that their acts are morally wrong, in what sense would the right empower you to *do* anything? That is, you could never count on the fact that there wouldn't be a person who refused to recognize your claim; and so *in practice*, you wouldn't have a *right* to do the act, but could only hope that others would allow you to do

it. You would be trusting in the benevolence of others, rather than making a claim on others in this case.

So it seems we have an effect: If we can't morally defend a right, then we don't really have a right at all, because a power to do something "in theory" is not a *power* at all; you must be able actually to *do* the act for it to be meaningful to say you have the "power" (even if only the moral power) to do it. But if we *do* defend the right, then in practice this is going to have to mean doing something to the violator that violates some right of his.

Ethicians are agreed on the fact that we may morally take action to defend ourselves against the violation of a right; but they differ widely on why it is legitimate. To be clear about it, the question is this: *How is it not inconsistent with me as defending my right to choose to do something that I know violates a right of the violator*?

Some have said that a person who violates a right "forfeits" his right in doing so; and therefore, since during his violation of your right he *has* no rights, you are not in fact violating his right in defending yourself. This is the "unjust aggressor" theory of the validity of defense of a right: we can defend ourselves against violations by an unjust aggressor, because he loses his rights by the fact of his unjust aggression.

Unfortunately, this position is not consistently sustainable either in theory nor in practice. A person has rights *by the title*, which is some aspect of his *actual reality*, not something that he "earns" by his virtuous actions. If rights depended on moral behavior, none of us would have any rights. So, for example, a person who chooses to rob me is, all during the time he is robbing me, a person, a human being who is a living body whose nature is a physical unit whose unifying energy preserves its biological equilibrium in the face of a hostile environment; and therefore, for me to give him a karate kick which would knock him out is in fact a violation of his physical

integrity. He hasn't *lost* his nature as human by trying to rob me; and he has the right not to be kicked in the neck by his nature as human, not by his choice to let other people alone. Hence, the fact that he is performing a morally wrong act does not give any grounds for his "forfeiting" his right.

Furthermore, the person may honestly not see that another's claim to the right has any basis. To take a silly example, I mentioned earlier that my wallet was stolen from my locker in the gym. The man who presumably stole it was arrested for a further attempt to steal things from the same locker room, and said that he did so "in order to survive." If he really believed that, and if he thought that this was the only way he could survive, then morally speaking he would be in the clear—and, as we will see, I might not morally have been able to prevent the theft in that case, since he didn't steal from me what I needed to survive. I am a little inclined to doubt his claim, however, since afterwards I got a bill from the credit card company which showed eleven hundred dollars in fraudulent charges made on the stolen card—in clothing stores. He needs a grand's worth of threads to *survive*? (I didn't have to pay the bill, by the way, in case you're wondering.)

But if we take a slave owner back in the old South, who honestly believes Blacks aren't human, how could he "forfeit his rights" as an *unjust* aggressor for doing what he thought was the right thing? Since none of us could be expected to avoid what we don't even *suspect* might be wrong, then it follows from this view that we would be "forfeiting" our rights without any way in practice to prevent it—and then how could we make rights claims? We would never know if we had them or not, because we wouldn't know if our well-intentioned acts were violations of some right we had no idea about.

So there is on this view no way to distinguish a "just" aggressor

#### Section 1: Rights

from an "unjust" one. Those who hold the theory cite the police when pursuing a criminal as "just" aggressors; but does this mean that the police can do anything they please to a criminal, because he's "forfeited his rights"? Obviously, very few people believe this, as the charges of "police brutality" testify.

Thirdly, there is the question, if the aggressor forfeits his rights, of which rights he loses. Does he lose all of them, so that a person who insults me has no right to life, and I can kill him for it? Or does he just forfeit the corresponding right in himself, so that I can call him names or besmirch his reputation, but do nothing else? But then that means that I can steal from the robber but not kick him and knock him out—and how can I *defend* my right not to be robbed by robbing the robber? Obviously, this is ridiculous.

Those who hold this view don't really hold this, but that only "proportional" action may be taken to defend the right; that is, action that does no more serious damage to the aggressor than the damage done to the possessor if he allows his right to be violated. This is the "eye for an eye" principle; you can't kill someone to defend yourself against losing an eye. On the other hand, this doesn't say that you can defend yourself only by inflicting the same *kind* of damage on the aggressor; it simply says that you can't inflict a greater *degree* of damage—and that, as I said in Chapter 3 of Section 7 of the fourth part and in Chapter 7 of Section 1 of the fifth part, can be roughly determined by the culture's attitude toward various sorts of damage.

But if you are going to hold that a person who is an unjust aggressor forfeits his right, then by what we just said, he doesn't forfeit the right in himself that he is violating in you, nor, apparently, does he forfeit *all* his rights, because you can't do more than proportional damage to him in defending yourself; he only forfeits some unspecified rights to the degree to which his violation of your

right does you damage. But this is silly, really.

Where are we, then? There is no reason why a person *would* forfeit *any* right of his by an attempt to violate anyone else's right; there is no way to establish whether he is an *unjust* violator or is a violator because he thinks himself perfectly justified in his action; and there is no way to establish which rights he has forfeited, because no one believes in practice that he has lost all of them no matter what right he is violating. After all, that would mean you lost all of your rights every time you told a lie to anyone (because you violate his right to know what you think is the truth).

There are some who have said that he doesn't forfeit the *right*, but just the *exercise* of the right. But this is a sophism, because the right is the moral power to *do* something, and if you have forfeited the "exercise" of it, this means that morally you can't *do* it—which is *exactly* the same thing as saying that you don't have the *right* to do it. You can't simultaneously have a right to do something and no right to exercise the right.

So there's no way you can make sense out of that theory.

So then how *do* we justify violating someone else's right in the defense of our own? Because that's what it has to be, since the violator still has his rights. Obviously, by the Principle of the Double Effect, which I discussed in Chapter 7 of Section 1 of the fifth part. But it isn't absolutely straightforward. In spite of the fact that no less a light than St. Thomas uses this justification, there are problems with it too—which, in fact, were what gave rise to the "unjust aggressor" theory.

These people say that if you are going to hit someone or shoot him, then the damage inflicted, if not in the act itself defined narrowly (in the sense I did in Chapter 7 of Section 1 of the fifth part—which in the case of shooting would be pulling the trigger on the gun, and in hitting would be moving your fist), is in such an

immediate effect of the act that it can't be divorced from it in practice; and therefore, the first rule is violated.

That is, these people contend that if I swing at your face and break your jaw, I can't meaningfully say, "*All* I was trying to do was to block your attempt to rob me," which is what I would have to say to keep the damage out of the choice. I would *also* have to want you to have a broken jaw, as the *means* toward keeping my wallet.

But that isn't really true, in fact, as. When I swing at your face, I don't perform the act of breaking your jaw, because I don't know whether you will duck or not, and then become frightened at my aggressiveness and run away, or whether my fist will break your jaw or simply cause pain without significant damage. Suppose you did duck and ran away. My wallet is safe, and no harm has been done to you. My action of swinging my fist has accomplished its good purpose *without any damage at all*. How then can the damage be so "immediate" or "intimately connected with the act" that it must be willed as part of the act if in fact it might not occur and the act itself might still bring about the good effect?

"Well, that might apply to swinging your arm," someone might say, "but it certainly doesn't apply to firing a gun. If you shoot someone, you can't say, 'I choose to pull the trigger,' and not say, 'I choose to kill him.' Again, you can't claim that this act *merely* stops his attack and that that's *all* you chose by pulling the trigger."

But I contend that I can. Suppose you are coming at me with a knife, so that I have reason to believe that I will be killed, and I have a gun, and am not an expert shot, and am not capable of shooting the knife out of your hand. I have reason to believe that the *only* way I can stop you is by shooting and aiming at your chest, the biggest target; and that, of course, will kill you.

So is it by your death that I save my life? Not at all, not even in practice. Suppose the gun misfires, makes a loud noise, and you

become frightened and faint—whereupon I run away. The good effect is accomplished with no damage at all. Suppose I shoot and the gun does not misfire, and you fall, clutching your stomach—and die in the hospital six weeks later. Did your *death* save me? it occurred six weeks *after* I was out of danger. Hence, since the good effect can occur without the "immediate" bad effect's occurring, and since the bad effect can in fact occur weeks or even months after the good effect, then the bad effect is *not* in fact "part" of the act in practice, but an *effect separable from it both in principle and in practice*.

Therefore, I think that when talking about the "act" in the first rule of the Double Effect, the act should be narrowly defined to include *just* the act you actually perform, and *not* its supposed "immediate" consequences. Hence, the *act* involved in shooting a gun is that of pulling the trigger, and is not the act of "killing someone," because the gun might not be loaded or might be filled with blanks—or there might not be someone standing in front of it, or it might not be aimed at a vital spot. And given, as I said, that the person might die weeks later even if aimed at a vital spot, or might not even be hurt if he were wearing a bullet-proof vest, I don't see how you can call the *act* that of "killing someone." True, if I did it *with the intention* of having him die, then my *choice* was to kill someone; but that still doesn't make the act itself an act of killing.

With that out of the way, then, let us look at the case of defending a right, and see if we can apply the Double Effect to it. The idea here is that the choice *does not* contain the harm you do to the violator (you in no sense want it), but *merely* the protection of your own right.

In order for this to work, then the following condition must be met, which I may state as a conclusion:

#### Conclusion 9: A right can only be defended against some act

## that is directed against it, not simply against a person who has threatened to violate it.

That is, even though the securest defense of a right would involve putting out of commission those who have told you they are going to violate it, you can't justify this on the grounds that "I was only blocking their attack on my right and didn't want any harm to come to them." In this case, it is *by their being disabled* that they can't carry out the threat; and therefore, the harm can't be kept out of the choice. That is, suppose your act of disabling them failed. Would you still be under the threat? Yes, of course—in fact, even more so, if they realized what you had unsuccessfully intended. Hence, the harm itself is necessary for your security, and therefore would be part of your choice.

On the other hand, this shouldn't be taken to mean that you have to wait until the danger is right upon you (here comes the fist at your face) in order to act. As soon as an aggressive action is taken, you may act to stop it. That is, if your opponent takes off his coat or squares away to hit you, you don't have to wait until his fist is in motion; he is in the process of attacking your right, and processes are not series of sub-processes; they are one act, however complex, and so you may take action as soon as the process begins. To take a social example, a country cannot defend itself from belligerent rhetoric on the part of its neighbor; but as soon as a troop buildup appears on its borders, it may strike before the borders are actually crossed, because the troop buildup, while it might be saber rattling, is in fact an aggressive action, and is what would be the start of an actual attack on your

country.7

Now, supposing this condition to be met, that some act violating a right of yours has at least been initiated. The supposition is that you now take some action to block the violation, and that there is no act capable of blocking the violation that does not in fact do some damage to the violator, and so your act will in effect violate his right.

*First*, the act of blocking the attack must be neutral in itself. In general, the act you perform (even shooting someone) can be totally devoid of harm if the person backs off as soon as he sees you begin to perform it. For instance, if he sees you reach for your gun and runs away, you can shoot the gun and nothing wrong will happen. Taking the act as narrowly defined will almost always result in this rule's being fulfilled. But not absolutely always. For instance, you can't defend a right by lying (which has the effect of violating the other's right to know, if he has one), because it *also* is a contradiction of the act of linguistic communication, as we saw in Chapter 5 of Section 2 of the fifth part.

Second, the act must be capable of defending the right. If I were to try to fight with my fists the heavyweight boxing champion in order to defend some right I had, then there would be no good effect to be expected from this act; he would escape injury, and I would be beaten to a pulp.

This second rule precludes doing acts that harm others "for the

<sup>&</sup>lt;sup>7</sup>Thus, "preemptive" strikes against an enemy are justifiable when the enemy *has actually taken warlike actions* in preparation for some aggression (such as amassing weapons of mass destruction that you have reason to believe it will use once it gets enough of them. So, President George W. Bush was not immoral in choosing to attack Iraq based on the information he had which, faulty or not, was eminently credible (everybody at the time believed it). Saddam Hussein had "hauled back for the punch," so to speak, and we didn't have to wait until the punch actually landed—which could likely have meant the obliteration of most of New York City, for instance.

#### Section 1: Rights

principle of the thing," as a demonstration that your right is being violated. For instance, to stage a revolution against a tyranny if there is no realistic hope of success is simply to make a dramatic statement that the government is tyrannical; but people will die and be maimed in order for this statement to be made, and the tyranny will not be lessened. In that case, no real good effect is achieved by the act (even if it is not already known that the government is tyrannical).<sup>8</sup>

Of course, you don't necessarily have to have a guarantee that your action *will* block the attack on your right; but it must be reasonably possible, and not simply a futile gesture.

Third, the harm done cannot be what brings about the protection of the right. This is really what I was discussing above. If your action doesn't have its damaging effect because the violator backs down before the effect occurs, then is your right protected? Yes. So the damage *itself* isn't what protects the right; it's the stopping of the attack on it that does.

Very often the damage and the stopping are simultaneous, as, for example, when in a fight the person gives up attacking you because he can't take any more punishment. But in that case, his *choice* is what actually stops the harm to him, not the injury he has received, even though his choice is motivated by the injury. As I said, his choice might have been motivated by the realization that he was *going* to be injured, and so the injury itself wasn't really a means to your protection. Even if you knock him out, it isn't the injury that stopped him, but his unconsciousness; if he had fallen asleep before

<sup>&</sup>lt;sup>8</sup>Thus, many of the Blacks in the early twentieth century morally went along with the unjust laws in this country, because they knew that either violating them or trying to get the changed would only lead to greater harm for them. It wasn't until Rosa Parks, who as an older woman was unlikely to be lynched, refused to give up her seat in the front of the bus, and the cultural climate's change on this occasion, that Blacks could emerge from their dehumanized condition.

you touched him, this still would have stopped him.

This is a tricky point, and it is where the "unjust aggressor" theory differs from what I am saying. For them, fighting would be committing "direct injury," or shooting at someone's chest would be "direct killing" because the injury or death, they think, *can't* be kept out of the choice because for practical purposes it is what produces the protection. And so you can't, according to them, not also intend the harm.

But that's not necessarily true, even in the case of a fight or shooting someone. In a fight, a good fighter might parry a few blows and land a punch or two and then say, "I don't want to hurt you; so give up." Here it is clear that the *intention* of the defender is *against* hurting the attacker, because he is giving him a chance to avoid injury once having established in the attacker's mind that the injury is bound to happen if he continues. Similarly, shooting at someone coming at you with a knife is ordinarily not an instantaneous thing. You would point the gun and say, "You take one more step and you're dead," and if he leaves, then no shooting actually takes place. Again it is obvious that the attacker's death is not wanted, because it doesn't occur if the attack stops. Or if you fire warning shots first, or even if the gun misfires and the attacker runs away, then when you don't shoot at the fleeing defender, you didn't choose his harm.

In any case, since there are so many contingencies which would produce the protection of the right without the injury's actually occurring, it seems to me that it is perfectly legitimate to say that, even in the cases where the injury occurs before the attack stops, the injury didn't have to be *chosen, still less intended*, because it wasn't *necessary* for the act to have stopped.

In the *fourth* place, there must be no willingness on the part of the defender that the attacker be harmed in any way. That is, if someone is trying to beat you up, you can't say, even if he has

bloodied your nose, "He deserves this," and proceed to bloody his nose.

## Conclusion 10: No harm may ever be done to another human being on the grounds that that other person "deserves" it. It is immoral to be happy about harm to any other person.

To be *willing* for another human being to be harmed is to *will* the harm to the other person, as we saw in general in discussing an unclear conscience in Chapter 6 of Section 1 of the fifth part. If you rejoice in someone's harm because, having done harm, he "deserves" it, then you are saying that we "earn the right" not to be harmed by not violating others' rights or by our virtue, when the basis of rights is our *nature*, not our actions. You would then be putting yourself into a position of having to "earn" your basic human rights, and not simply having them because of your humanity.

In that sense, no human being ever deserves harm. One who violates another's rights has already violated his own reality by contradicting his personhood, and has in fact done eternal damage to himself. Either that, or he did the damage inadvertently or even unwillingly, and then in what sense would he "deserve" any harm? In Chapter 1 of the Fourth Part, we saw that he would not then be morally responsible for it.<sup>9</sup>

But even if his violation of a right was deliberate, any harm done to the perpetrator in this life only adds to the injury he has done himself, and, to the extent that it is willingly inflicted by the injured party, makes the two of them "even" in that now both are facing

<sup>&</sup>lt;sup>9</sup>In this sense, only God knows what the actual responsibility for the action was. The perpetrator himself does not know all about it, because there may be incentives to performing it that were hidden from him.

### Part 6: Modes of Interaction

the eternal frustration that comes with choosing what contradicts one's own nature. So the person who takes vengeance has "gotten even" by injuring himself as much as the person he has taken vengeance upon. And if course, if the original violation was unintentional, then the person who took vengeance didn't "get even," but caused himself eternal frustration, while the other faces eternal happiness.

Conclusion 11: Vengeance or "getting even" for an injury is never legitimate, because it involves choosing harm to another person.

Now this is not to say that the defender might not feel emotional satisfaction as he sees his enemy reduced to a bloody pulp; but he can't will that condition. There's a difference, as I have said before. Emotional reactions are automatic, and our defense drive gets satisfied by seeing injury to the attacker; and so it is almost inevitable that we will feel satisfied. But feelings are not choices. And the criterion for whether the feeling is willingly indulged in here is whether the defender stops the injury as soon as the protection of his right is assured. In this case, he is not trying to "get even."

Hence, the point of this fourth rule is that the injury must be regarded as an unfortunate side-effect that in the circumstances is unavoidable. You must actively not want the injury.

Finally, the injury inflicted must not exceed the injury defended against. If the damage to the attacker is likely to be greater, then you can't use the act that would inflict this damage, because your act would in effect be more harmful than it would have to be (allowing the violation would involve less "objective" harm, even though the harm would be to yourself).

Now the reason why I say that the damage must not be "likely"

#### Section 1: Rights

to be greater is that, when you choose to defend yourself, obviously you haven't done the defending yet; and in the course of a fight, things may happen which you didn't foresee when you chose to get into it. For instance, you may simply have chosen to parry the person's blows; but in the course of doing this, you may have hit him in a vital spot and actually killed him. Your action was not calculated to be the sort of thing that would kill him, and so the "proportion" in this fifth rule is maintained.

The idea here is, as I have said so often, that you can't shoot at someone to protect your wallet (because the likely effect of that is his death).

Note here that this has nothing to do with the injury as the means to the protection of the right. If you shoot someone to protect your wallet, it isn't his death that lets you keep your wallet, it's his ceasing from trying to take it. His death comes afterwards. The point here is that this effect is so much worse than the loss of your wallet that the action taken which has both effects can't be chosen simply to avoid the lesser evil, because that entails accepting the greater evil, even if it occurs afterwards. Hence, your will is not away from evil or wrongness in this case.

But does this mean you can actually kill someone in self-defense? Yes, but only in defense of your life. The reason is that anything else, while you might think its loss is a fate worse than death, is regarded by "everyone" as less serious than death, which of course deprives a person of everything in this life. Hence, the only time the fifth rule is fulfilled in the case of killing someone is in defense of someone's life.

Of course, you can kill someone in self-defense (or defense of anyone else's life) only if nothing short of this will do the job. Obviously, if you could have defended yourself by shooting at his legs and disabling him rather than shooting to kill (i.e. supposing you

were that good a shot), then your shooting to kill would stop the attack, but you would now also be choosing his death, because you could have achieved the same effect by doing something calculated to cause less damage; hence, once again the unnecessarily great harm would now be in your choice.

# Conclusion 12: It is immoral to choose an act which inflicts greater harm than necessary in defending a right.

Note, by the way, that if there is an alternative, like running away or locking the door or getting a court injunction that protects the right and does no damage at all to the person violating it, this course of action must be taken, however cowardly it might seem. You can only take damaging action when nothing less will work in practice. Of course, if you have reason to believe that your running away will only incite him to further attacks on you or others, you can stand your ground and fight.

But then can you shoot five or six people in order to defend your own life, if they are all attacking you? It would seem that the loss of one life (yours) would be less serious than the loss of six lives. But since the loss of life is regarded as the "ultimate" loss, then there is in that sense "nothing worse" than it, and the loss of one life is "just as serious" as the loss of twenty for moral purposes. Hence, you can defend your life even if it means killing many attackers.

There is a caveat to this, however. Suppose you are John Rambo with your automatic weapon, and a group of ten attackers is coming at you, and you want to mow them down with a spray of bullets. But behind them is someone who happens to be passing by, who might get hit. Can you shoot them?

First, pulling the trigger and spraying bullets around is not wrong in itself; if there were no one there to get hit, what would be the

problem? Second, the act has a good effect: you live. Third, the others' death is not what produces the good effect, as we saw. Fourth, you're not trying to kill anyone; you love them all like a good Rambo should. Fifth, the right you are defending is the ultimate one.

So the rules seem to be verified; if someone besides the attackers happens to get killed in the act, this is accidental, and need not be included in the choice; you're not trying or intending to kill anyone. Presumably, you couldn't defend your life without spraying the bullets all around, because the attackers are on all sides; and hence, there is no way that the death of the bystander could have been avoided if you were to save your own life.

But when the number of non-attackers becomes significant, then a point is reached (different for each person) when you realize that it is no longer meaningful to say, "*All* I am trying to do is defend my life." For instance, if there are three people attacking you, and they're shooting at you from the audience of a crowded theater, can you throw a bomb into the crowd, knowing that it's going to kill everyone and therefore the three who are shooting at you? Ninetynine per cent of the people you will be killing have nothing to do with the violation of your right to life; and so, even though you are defending yourself against the three who are shooting at you, any normal person would realize that he is also going to be killing a lot of people who have nothing to do with the attack (a lot of "innocent" people).

And it seems to me that in this case, it would be the rare person indeed who could keep this additional side-effect of his act out of his choice. For any normal person, the choice would be, "I am defending myself from being killed, and also killing all these other people in the process."

This is not to say that if the people in front of you were an

attacking army you couldn't lob a bomb into them and justify it by saying that all you were trying to do was defend yourself. All these people are attacking you, and you are then simply blocking the attack. It's when there are enough non -attackers that will be killed or injured that the statement "I was only trying to defend myself" is a sophism.

And this, of course, is where the immorality of the use of weapons of mass destruction comes in. It isn't that there's something magic about "nuclear"; a nuclear shell that, fired at an attacking army, would kill the people within a hundred yard radius causing little destruction to the environment (the so-called "neutron bomb" that caused Jimmy Carter so much trouble when he proposed it) is in fact more humane than conventional weapons. No, whether it is nuclear weapons or poison gas or obliteration bombing of cities with TNT as in the Second World War, the problem comes when significant numbers of those not actively engaged in attacking will be killed by the action.

Some of these things, even used tactically on the enemy forces, might also be immoral on the grounds of causing unnecessary suffering, as in the case of some poison gases that would make people writhe in agony for weeks until they finally died.

By "those not actively engaged" I include those who sympathize with the enemy (all the enemy's citizens presumably do this), and also all those who are doing something to help the enemy, such as the farmers who are growing grain which will be eaten by the soldiers, as long as this activity is one which would also be going on in peacetime. A person, however, in a munitions factory is doing something which can only be accounted for in terms of war; and so he is someone actively engaged in the aggression you are defending yourself against.

Now if someone happens to be visiting the munitions factory, and

you blow up the factory, or if there is a house nearby and it gets destroyed, this is like the situation of the bystander when Rambo saves his life against the ten attackers. So you can bomb the factory without having the death of the people in the nearby house on your conscience. But when you bomb the whole city to get rid of the factory, you have done the same thing as bombing the theater to get defend yourself against the three people shooting at you.<sup>10</sup>

I will discuss later why countries have a right to defend themselves. Supposing that they do, and supposing this right is analogous to (or "as serious" as) an individual's right to defend his life against attack, then what I said above would apply; and it is this use of the Double Effect, in fact, which forms the basis of the "just war" theory. But I will get into that later in this part when I discuss civil society and establish that the society has in fact a right to exist, and a right that would allow killing in its defense.<sup>11</sup>

<sup>&</sup>lt;sup>10</sup>So a certain amount of "collateral damage," as they say, is morally justifiable; it is that when it becomes extensive, it's not "collateral" and is in fact part of the choice. Thus, Timothy McVeigh's justification of blowing up the federal building in Oklahoma was invalid, because, though the building belonged to (what he considered) an evil, aggressive government, practically everybody in the building had nothing to do with the alleged aggression. The building in fact was blown up, it seems likely, to "send a message," and this, of course, is to use a wrong means toward a good end.

<sup>&</sup>lt;sup>11</sup>As a final remark about this fifth rule of the Double Effect as applied to self defense, one of my colleagues, Rev. Gerald Twaddell, told me that he would not consider that he could defend himself against an attack on his life by killing the attacker, because the attacker was probably sinning in the attack, and his killing him would be sending him to hell (whereas, presumably, if he himself were killed, he would go to heaven). Though I find this laudable, I don't think it's really a valid application of the fifth rule's injunction against avoiding the greater damage. If the attacker is a sinner, he has already brought eternal frustration upon himself, and can only avoid it if he repents; but how is it doing "greater damage" to him by giving him only seconds to repent rather than years? You could argue that if you shot your attacker, he

Let me make explicit as a conclusion something I have mentioned in passing a couple of times already:

# Conclusion 13: A person may take action to defend *anyone's* right against an attempt by anyone else to violate it.

That is, since you are not in any special position as far as rights are concerned, all of what was said about with respect to *self*-defense is applicable to a defense of anyone else's right also.

The assumption, however, is that you may step in to defend the other person *if he is willing for you to do so*, whether he explicitly says so or not; but if he positively *does not want* you to intervene in his behalf, then it's his life and his right, and he is to be let alone—unless, of course, his acquiescence in the violation of his right involves some third party's right also being violated.

For instance, a person who consents to be sterilized is acquiescing in a violation of his right to physical integrity and of his right to be sexually potent. This right happens to be absolutely inalienable, as we will see, because the person cannot morally give up this right; but *if* he is willing to have the act done to him, you cannot morally intervene to prevent the act on the grounds that his right is being violated.

In principle, a person could intervene to prevent an abortion, because, even though the mother is being deprived of her motherhood, there is another right, that of the fetus, whose ultimate right

wouldn't die instantaneously, and his mortal wound might actually be more likely to cause him to see the error of his ways, especially if you, a priest, were right there with both your own and your Master's forgiveness to offer him. Who is to say that this wouldn't be just what he needed to get into heaven, rather than letting him get away with your murder? So that particular sword cuts both ways.

#### Section 1: Rights

is being violated also; and while her life is hers and is not to be interfered with, the fetus's life is *not* hers, and she cannot do him any damage in "doing what she wants with her own body." You can see the principle here if you suppose that the baby was born and the mother had *only* her own milk for his sustenance, and out of a desire to "do what she wanted with her own body" she refused to feed him and let her breasts dry up and shrink back to normal, killing him by starvation while she was at it.<sup>12</sup>

At any rate, taking action involving what is in fact a violation of another's right in defending a right of a person is morally legitimate, with all the qualifications we made above concerning it.

Let me make some final remarks about rights in general before speaking about the different kinds of rights we have:

## Conclusion 14: The possession of a right carries with it of itself no obligation to exercise the right.

Since a right is a *power*, not an act, then it is something that, in itself, you can *either* do or not do; and hence, the fact that you have a right to do something does not give you any obligation to do it.

Of course, if you *have* an obligation to do something, then you automatically have, as we will see, the implied right to do it; but the converse is not true. For instance, since you have the obligation not to commit suicide, you have the right to life (not to be killed); but your right to get married doesn't mean that you *have* to get married

<sup>&</sup>lt;sup>12</sup>In practice, taking violent action to prevent abortions, such as bombing clinics, can't morally be done, because this sort of action causes a social backlash which puts off the day when such charnel houses can be closed by law, and so in effect results in that many more deaths.

if you don't want to. It follows from this that

Conclusion 15: A person *need* not defend himself against a violation of his right, but may forego its exercise, as long as the right is not a right implied by some moral *obligation* he has.

This needs some spelling out; and to begin it, let me define what I mean by *coercion*.

*Coercion* is the use of moral force which violates a right of the one forced.

*Moral force* is the threat of some kind of damage if some act is not done or avoided.

If I seize your arm and move it onto the table, then I have used physical force; supposing I am stronger than you, you do not have the physical power to prevent your hand from moving. The same would apply to tying you up, in which case you are physically forced *not* to move.

But if I point a pistol at you and tell you, "Hand over your wallet," I have not actually moved your hand into your pocket, but have "forced" you into making a *choice* to do so, because I have presented you with the alternatives of either doing what I say or dying. I have left you "no choice" only in the sense that the second alternative is so damaging as to be completely unreasonable to take. So in one sense you are free, but in another not, as we saw when we were discussing the different meanings of freedom in Chapter 6 of Section 3 of the third part. This second kind of force is the moral force which is a threat.

#### Section 1: Rights

Note that offering a *reward* is not really to use moral *force*. It might be a *temptation*, but it is in the realm of values, not necessities, and therefore can be freely rejected in the sense that the threat cannot, as we saw in Chapter 3 of Section 7 of the fourth part. It is always possible to give up a goal for some other goal; but it is not *moral* to give up a necessity except for a greater necessity (i.e. to avoid greater damage). The person who is threatened with being shot unless he hands over his wallet, therefore, is *morally obliged* to hand it over, using the Double Effect, because the fifth rule would be violated if he chose to get shot instead.

But not every threat of damage is coercion. For instance, if you are attacking me with a knife, and I point a gun at you and say, "If you come one step farther, I'll kill you," I am not *coercing* you, strictly speaking, because you are morally obliged to stop your attack anyway. I am using moral *force*, but the threat does not violate any *right* you have because you have no right to continue your attack on me (no one's rights extend to the violation of any other right).

Similarly, when governments pass laws with punishments attached to the violations of them, they are exerting moral force but not coercion, because the assumption is that (a) they have the right to make demands on the citizens' freedom, and (b) the act they command violates no human right of the citizen. Or when parents threaten punishment if their children don't do something, then on the assumption that the children don't have a human right not to do the act and the punishment for violation is not so great as to be disproportionate to the harm done in disobedience, then no coercion is involved—even if what is threatened is something like a spanking.

Now what is the morality connected with the use of moral force, and with a person's conduct when being forced?

In the first place, to use moral force to induce an act which is *morally wrong* is *always* coercion and is therefore morally wrong. And

as far as the person so coerced is concerned, we may draw the following conclusion:

Conclusion 16: A person always *must* refuse to do a morally wrong act, no matter what the threat, and must try to defend his right not to do it, if possible.

I mentioned the example of Darth Vader telling you to shoot someone or he would kill your family. You must not do it. If he were to tell you to lie, you still could not do it to save your family—or the whole world, for that matter. And the reason is that the morally wrong act, however insignificant it might be, would be the *means* toward avoiding the harm, however great it might be, and so it would enter into the choice and would have eternal consequences. I mentioned in discussing immortality in Chapter 3 of Section 4 of the third part that if you take this life and the next into account, the amount of damage done by the lie's eternal consequences is greater than the amount of damage avoided. Hence, when the damage is *within* the choice, no damage is ever less than the damage avoided by it.

But of course, not every act we have a right to do is an act we have an obligation to do, as I mentioned in Conclusion 14. Suppose a person threatens you with some harm in doing some act you have a right not to do, whatever the title of the right. Of course, once again he, no matter who he is, is guilty of coercion, and his attempt to force you is by that fact immoral. What is the morality here?

Conclusion 17: A person *may morally* refuse to do what he is coerced into doing, and generally should refuse; but he *may also* yield to the coercion, using the Double Effect.

#### Section 1: Rights

Since you *have* a right not to do what you are being coerced into doing, then in general your yielding to the moral force exerted on you is a kind of cooperation with the other person's violation of your right (and consequently a cooperation in his immorality). By your "letting him get away with it," you are confirming in him that it is advantageous to trample on others' rights; and this has consequences not only for yourself but for others who might also fall victim to him.

Hence, there is a kind of general obligation to resist violations of your rights.

But.

It can also be the case that if you *do* refuse to yield to his coercion, you will suffer some *worse* harm than the harm that would be avoided by resisting. In this case, or in the case where the harm involved (to you and others) in resisting is equal to the harm avoided by resisting, the Double Effect must be used:

The *act* you perform in yielding to the coercion must not be morally wrong (we saw this in the preceding conclusion). There must be some good to come from doing what you are coerced into doing (removing the threat). This will always be fulfilled. The harm obviously is not the means to the good effect, which is precisely the avoidance of the harm. That is, the only *harm* here is the fact that your right is violated; *not doing* the act you have a right to do (or doing the act you have a right not to do) is not harmful, because you have a right to do or not do the act. You must not by your act deny that you actually *have* the right that you are refusing to exercise at the moment; and finally, the harm done by not exercising the right must be no greater than the harm that would be done by exercising or defending it.

So as long as the act itself is not morally wrong, you may or may not perform it as you see fit, and the fact that the threat involved in the coercion is great enough to make it more disadvantageous to

exercise your right makes it moral to choose not to exercise it and go along with the person threatening you.

# Conclusion 18: A person may not yield to coercion if the violation of *another person's* right is also involved.

While you may refuse to exercise *your own* rights, supposing the act you perform is not morally wrong, you cannot morally *extend* that to people you have under your care. The example I have in mind is that of pacifists who think that *governments* should not resist coercion on the society itself, and should yield to aggressors rather than go to war to defend themselves. An *individual person* may yield to an aggressor and refuse to fight, but the government's function (as we will see) is precisely *to protect the rights of the citizens*, and if a violation of these is threatened, the government *cannot morally refuse to resist*.<sup>13</sup>

<sup>&</sup>lt;sup>13</sup>In that sense, there cannot be such a thing as a "Christian" civil society which follows the rule of "turn the other cheek." While an individual *may* do such a thing, one cannot make this Christian demand apply to those one has under one's care.

As far as the Christian's yielding to aggression and in general not resisting coercion is concerned, first of all, he cannot do so if what he is coerced into doing is morally wrong, as we saw. In all other cases, he can, however, *if* in faith he trusts in Divine Providence to see to it that by his yielding in accordance with the wishes of his Master, the *Master* will bring it about that the habit of so doing will not result in the greater damage involved by confirming aggressors in their habit of aggression.

That is, Christian meekness, if not based on faith in the supernatural, would be immoral, because, as I said above, *habitually* to yield to violations of your rights is in effect to deny that you have them when in fact you have them. Hence, this Christian virtue would be a moral *vice* if we did not believe God arranges things so that we don't have to worry about the untoward consequences.

### Chapter 6

## Kinds of rights

ow then, to classify rights, obviously we have as many different kinds of rights as there are kinds of aspects of ourselves, either innate or acquired, which give us the power to act: as many as there are kinds of titles. I do not intend here to give an exhaustive survey of all of them, but merely to mention some, and then to discuss a few of the major human rights.

But first, any right is either alienable or inalienable (or, if you prefer to use Jefferson's term, "unalienable"); that is, it can either be taken away from you under certain conditions or it can't.

A right is *absolutely inalienable* if the possessor may not morally give it up. No one, of course, may take it away, either.

A right is *relatively inalienable* if the possessor may morally give it up if he wishes, but no one, not even civil society, may morally force him to give it up.

A right is *alienable* if the possessor may morally give it up and under certain circumstances, it can be morally taken away from him.

An example of an absolutely inalienable right is the right to life.

6: Kinds of rights

Since it is immoral to choose to kill yourself (because, as we saw in Chapter 3 of Section 2 of the fifth part, it is inconsistent with your reality as a living being), then you can't kill yourself by proxy by asking someone else to kill you and giving up your right to life, because that would be to choose your own death, which is immoral. By the same token, even if someone asked you to kill him, you could not do so, because under no circumstances may you *choose* another's death; the only thing that justifies killing another person is the Principle of the Double Effect, which precisely keeps, as we saw, the death out of the choice.

An example of a relatively inalienable right is a person's right to get married. You may freely enter an organization such as a Religious order which forbids your ever marrying or engaging in sexual activity; but you may not morally be *forced* to do so. Since we cannot choose not to belong to civil society, as we will see, then government could not pass a law forbidding marriage, because this would force a person to give up a relatively inalienable right.

An example of an alienable right would be your right to have another person fulfill his part of a contract you entered into with him. You may, if you choose, release him from his obligation (thus giving up your right against him), and you may be forced to do so if he goes bankrupt, even if he is physically capable of fulfilling the contract. In the case of bankruptcy, it has been determined that his fulfilling of all his contractual obligations would cause so much hardship to him as to be significantly dehumanizing; and so your insistence on your right under these conditions would now be a violation of his right.

There is, of course, a sense in which all rights are at least relatively inalienable, or they wouldn't be rights: that you can't be forced against your will to give them up. How could you have a right to do something when you could be prevented from doing it? But of

6: Kinds of rights

### Section 1: Rights

course, as we said in Conclusion 4, *any* right is *limited* by the rights of others, and you can't exercise it *in such a way* that it violates any right of anyone else—except, we can now add, when the Double Effect would allow you to keep the other's violation out of your choice. This applies to absolutely inalienable rights as well as to alienable ones.

The difference between relatively inalienable rights and alienable ones is that relatively inalienable rights are *the ones that government can't deny by law*. The fact that the State of Ohio could (and did) pass a law that said that people of high-school age could not receive driver's licenses unless they were in school shows that the right to drive a car is *alienable*. Since the State confers the right to drive (under the conditions it imposes), it can also take away that right (under the conditions it sets up for revoking it).

The major kinds of rights, then, are the following:

First, *human rights* have as their title the fact that the possessor is a human being, with the genetic potential of a human being. All these rights are at least relatively inalienable. Those actions which a human being *must* do because not to do them is to violate the moral obligation (i.e. is equivalently to do himself damage) carry with them rights that are absolutely inalienable, while those which a person may refrain from without doing himself damage are relatively inalienable.

We will see shortly a brief rundown of human rights, as I said.

Secondly, *civil rights* are those we have because of our title of citizenship in a nation. These are the rights that depend on the *constitution* of the society and the later laws passed according to the constitution. Thus, the right to vote is a civil right I would have possessed if I had lived in the United States of 1790, but my son would not; because I am a property owner, and (at the time I originally wrote this) he was not, and the right was granted originally only to property owners. The law, however, was changed, and now

## Part 6: Modes of Interaction

we both have this right. My wife, on the other hand, has no right to vote even now, because she is Argentine, though a permanent resident here, and is not a citizen; hence, she doesn't have the title to any civil rights of the United States. She only has her human rights, and any sharing in what we have a right to do as citizens is extended to her as a privilege.

A *privilege* is the granting of some power as if the person had the right to perform the act in question, when in fact he does not have title to that right.

When you do something by privilege, then, you are precisely *not* entitled to do it, and are simply allowed to do it by the graciousness of the one ceding the privilege. We cannot, obviously, *claim* privileges, the way we can claim rights; and that is the basic difference.

Note that *civil rights are alienable*. If they depend on the constitution or laws of the society, the society can remove them by changing the constitution or laws, or can add new ones by passing new laws. The so-called "civil rights movement" of the Blacks in the middle of the last century should not be allowed to cause confusion here, as if civil rights were inalienable. That movement was only in part a civil rights movement; it was much more a *human* rights movement in that legislation was preventing Blacks from doing things they had a human right to do. There were also civil rights questions involved, of course, in that, though they were supposed to be citizens, there were restrictions in law that effectively prevented them from being able to vote, or do other things that "real" citizens had a right to do, such as use public libraries.

Of course, every human right must be made also a civil right, because the government cannot force human beings to act as if they

weren't human beings, which is what not "granting" them civil rights would be tantamount to. It goes without saying that that was one part of the thrust of the civil rights movement. The other was that *rights granted to citizens as citizens must be conceded to every citizen.* This is obvious, because the title to a civil right is citizenship; otherwise, it is some kind of civil privilege, or a contractual right between the government and some individual, not a civil right at all.

Note that the United States Supreme Court, in its infamous Roe v. Wade decision, in which it refused to decide the question of whether the fetus was a person, was precisely shirking its moral obligation in this respect; because if the fetus is a human being, then he has human rights, as the Declaration of Independence, by which we exist as a separate nation, spelled out; and these rights, as human, are not granted by government, nor can they be taken away by government, but must be acknowledged and protected by government, and *must* be made civil rights also. The Court had simply no authority to refuse to consider whether fetuses were actually possessors of these rights or not. Such actions of a government's refusing to recognize a human right are grounds for revolution and forming a new society, as we ourselves proved in 1776. Hence, the Supreme Court's action on that deadly day in January was a repudiation of the very basis on which we exist as a separate nation, whether the right to life of the fetus was explicitly in the Constitution or not. The same thing, of course, happened with respect to the human right to liberty in the Dred Scott decision about a half century later.

Thirdly, *acquired rights* are those rights you have because you did something to get them, such as the right to drive a car, which is granted to you for passing a test, or the right to own a house, which is acquired by buying it, and so on.

Fourthly, contractual rights are those rights which are acquired

## Part 6: Modes of Interaction

from a promise that a person makes to you. Here it is enough that the person *made* the promise; but since the title to the right has to be something that can be demonstrated to others, then to be binding for legal purposes the promise either has to have been made before witnesses who can testify to it, or in writing, so that the document can be produced to show that it was in fact made. Of course, any promise made is known by God, and so the right against the person who made it really exists even if it hasn't been "put in writing" or made before witnesses; and that is why I said that the promise is binding for *legal* purposes under these conditions; because judges in this world can't be expected to be omniscient, and need evidence that an act really took place. That is, the person who breaks an unwitnessed oral promise is guilty of that act and takes the eternal consequences of violating your right; it is just that you can't protect your right against him by going to court, say, unless you can prove that he made the promise in the first place. So get it in writing.

Finally, for our purposes, *implied rights* are those that *deal with acts that are necessary for the performance of something else that a person has a right to do*. I had a discussion one time with the president of our college, who claimed at an assembly of faculty that parking was a privilege. I raised my hand and told him that I had a contract to teach there, and therefore I had a right to teach there; that there was no way in practice I could get there unless I drove, and parked my car; and therefore, I had to be able to park if I was to teach. So I had a right to park, not a privilege. He actually yielded the point.<sup>14</sup>

Obviously any obligation we have carries with it the implied right

<sup>&</sup>lt;sup>14</sup>Actually, his point was that we were not to violate the conditions under which we could park (the approved spaces and so on); and the College had the right to determine these conditions, provided it did give the faculty the practical ability to find parking on campus.

to what is necessary to carry it out. For instance, since we have the obligation not to kill ourselves or not to make ourselves unhealthy, we have the implied right to food that will keep us alive and in minimal health—and this would be a human right, because the obligation we have not to damage our health is the moral obligation that comes from our nature as human.

Implied rights are what is violated by what is called the "catch-22," where a person is given a right, but is denied the conditions necessary for exercising it. The classic example is from the novel of that name, where a pilot in the Second World War was allowed to leave the service if he was insane; but if he applied to leave, that showed that he was sane (since no one in his right mind would want to stay); and therefore, he couldn't get the discharge. But Thor Heyerdahl in *The Ra Expeditions* mentions a real case of this when he was trying to get African papyrus boat-builders to leave their country and help him build his replica of an ancient Egyptian boat. They were allowed to leave if they could get a doctor's certificate; but all the doctors who could give it were outside the country.

## Chapter 7

## Human rights

hose are the most important of the different kinds of rights. Let us now look at a few human rights, and see something of what they imply, morally speaking.

First of all, let me enumerate some "rights" that people seem to think they have, but don't really possess. I will state them as conclusions, since they need emphasis, I think.

## Conclusion 19: We have no right to be treated equally with others.

The reason for this, of course, is that we are *not* equal to others, and therefore don't have to be treated as if we were. The reason this is thought to be a right, of course, is that rights are thought to be based on "equality," at least "equality before the law." But as I said earlier, this is not really equality, since all it means is that no right anyone has can be violated; and obviously, as we can see now, some people have many more acquired rights than others.

Nevertheless, it is, for another reason, morally wrong to *discriminate against* people of a certain identifiable group, preventing them *by the mere fact that they belong to that group* from doing things which individuals in the group can do.

For instance, no individual person has a *right* to be a doctor; but if Black people or women are *prevented*, as a *class of people*, from

#### Section 1: Rights

becoming doctors, either by law or by social practice, then what the law or the practice is saying is that *these people are not capable of being doctors, simply by reason of being Black or women*, when in fact some of them are not capable of being doctors and some of them are. Their color or sex has nothing to do with their capacity to be doctors; and refusing to allow anyone (or for practical purposes anyone) to achieve this goal, should he set it for himself, asserts something false about his reality.

Conclusion 20: Even though no individual in a given group has a right to some human act, the members of the group *as such* must not be forbidden to perform it, provided it is a human act and there is nothing in their nature as such that prevents them from performing it.

Now *if* there is something in the group's nature as such that would render "for practical purposes every" member of the group incapable of performing the act, they can be forbidden to do it, *unless* some member can demonstrate that he does not have the particular aspect of the group's nature.

Thus, there *must* be discrimination in the sense of discovering whether there are in fact aspects of certain people's nature which would make performing some task dangerous for them in general. Provision for exceptions must, however, be allowed, because individual differences are usually greater than group differences.

For instance, if there is some task that involves very heavy lifting which many men can do but which only exceptional women can do (especially if it would be harmful to average women if they kept doing it), women may morally be excluded from performing the task even if they want to, unless a given woman can show that she is

strong enough.<sup>15</sup> Similarly, if a certain task involves exposure to radiation in the area of the abdomen, radiation which is safe for an adult but dangerous for a fetus, women may morally be excluded from this task, since they might get pregnant and injure their fetuses before they realized they were pregnant. In this case, a woman who had had a hysterectomy would obviously not be excludable.

As to "reverse discrimination" to rectify past discrimination, *this is morally permissible*, because *no individual* of the group that was not previously discriminated against has a right to the act in question, and the group *as a whole* is not being forbidden to do the act.

But this can only occur until the time when people in the group previously discriminated against have a reasonable chance to perform the act, and must go no further, because then the preferential treatment is saying that the group as such is more capable than the other group of performing the act, when in fact it is not.

"Reverse discrimination," then, is very tricky to put into practice. The sins of the fathers are not to be visited on the sons; but at the same time, Lyndon Johnson was right in saying that you can't say to a group of runners who were never allowed to practice, "Now you can run the race; here you are at the starting gate," and simply let them go. They need to be able to acquire the skills needed to compete with the larger group; and that was part of the discrimination.

But "reverse discrimination" when it is more than minimal contradicts the nature of the group discriminated against, and has deleterious consequences beyond mere hatred by the formerly

<sup>&</sup>lt;sup>15</sup>Of course, this has to be based on objective data, not anecdotal evidence. Women and Blacks have been excluded from certain things because "everybody knows they're not capable of it," because they're "not strong enough" or "not smart enough" or whatever.

#### Section 1: Rights

discriminating group. For one thing, setting quotas means that members of the minority group who are *not* in fact capable of doing the task, or are capable only of doing it badly, will replace those in the majority group who could do it well; and the result of that is that the majority group will have *reason to believe* that they were right in thinking the minority incapable in the first place—and when the minority members find how hard it is for them to do well, they will begin to think so themselves.

And this, of course, if the goal is to bring the minority into the mainstream, will lead to a lessening of standards of performance, and a consequent deterioration of the task being done; and it will not, as I said, solve the basic problem, because the notion of incapacity by reason of group status will simply be reinforced.

Let me give an egregious example of this. Supposedly, we do not in our country have quotas for hiring minorities, especially Blacks. But in those jobs for which people have to take government tests, it was reported in *National Review* in 1990 that if a Black got a score of 300 on the test, he would be ranked in the 70th percentile, indicating that he was better at the job than 70 per cent of the people, while a White or an Asian getting that score would be ranked in the 30th percentile, indicating that 70 per cent of the people were better qualified than he was. Why? Because Blacks were ranked only with other Blacks, while Whites and Asians were ranked against everyone who took the test.

Imagine, then, an employer hiring a Black, who, because he was in the 70th percentile, was thought to be very well qualified. But as soon as he begins work, he shows that he is way below average in his ability to do the job. What is the employer going to think? That he is lazy. What is the employee himself going to think? That he's no good. To the extent that many employers hire people based on this test, word is going to get around that Blacks are shiftless burns,

because they don't work up to their potential; and Blacks are going to get the idea that the employers are putting all the tough jobs on them, because they are well qualified and can't do the work. Since there is this prejudice in the minds of both groups already, they won't tend to suspect the test, which is what was really biased. And thus the test, which was supposed to lessen and get rid of prejudice, only reinforces it.

This is why reverse discrimination is a poison, which, if used very sparingly, can heal, but if used beyond the proper dose, can kill.

It follows from the first "right" we don't have that

### Conclusion 21: We have no right to equality of opportunity.

This is another one of those fallacies from "all men are created equal." It is sometimes conceded by people that we don't have a right to equal *treatment*, but each of us has a right to an equal *chance*.

But this would imply that by nature we are equally talented, and this "fact" must be recognized by others. Why? Because what is a talent but an *ability to do* some act that a person has because of his genetic potential. It is the *natural* "opportunity" we have. But it is obvious that here, precisely, is where we *differ in degree* from one another.

And what that implies is that the talented in a given area can make use of opportunities to develop the talent, and the untalented cannot use them at all, or even would use them to their own harm. Weights a muscular person could use to make himself very strong could destroy an anemic person. Should *everyone*, then, be given *equal* access to weights and muscle developing equipment? If so, the potential weight lifters will *not* be able to develop themselves fully (because they only have the same access as the weaklings), while the

weaklings will have no use for the average amount of equipment.

The same goes for educational opportunity, or any other opportunity. If access to educational values should be *equal* for everyone, then the geniuses will not be able to develop their potential, and the retarded will be confused and give up.

Obviously, what is really meant by "equal opportunity" is that everyone should be allowed as much opportunity to develop his own nature as possible, consistent with others' not being deprived of opportunity to develop their special natures. It isn't a question of equality, but of not denying the nature and inclinations a person has.

Again,

## Conclusion 22: No one has a right to equality of income with anyone else.

We will see more of this in the next section, particularly in relation to "equal pay for equal work," which turns out to be undefinable. The point here is that, since we are not in fact equal, then equal economic *freedom*, which is what equal "income" really means (i.e. equal economic resources) is not a right we have; especially since, as we will see, this freedom comes as a compensation for service (a kind of giving up of freedom) and depends on the value the purchaser sees in the service as well as the value the seller sees in performing it. Since people do in fact have wildly disparate goals, it would be precisely *contrary* to human nature to seek equality in freedom to achieve them, which is what economic equality really means; some would have more than they knew what to do with, while others would be frustrated.

Let us therefore pass on to a few of the human rights that we do have, and discuss some of the moral aspects of them.

First of all, we have the right to *life*, which means that no one

may ever morally choose to kill another person, as I said. I also said that this right is *absolutely inalienable*, so that

## Conclusion 23: Even if a person wants to die, he may not morally be killed on the grounds that this was his wish.

Thus, "assisted suicide" or any cooperation with a person's suicide is morally wrong. A person may be killed only when the Double Effect applies.

From this and what we said in Chapter 3 of Section 7 of the fourth part, it follows that

## Conclusion 24: Every human being has a right to what is necessary to sustain life.

To refuse to give a person food or water, for instance, and to let him starve is to choose his death, unless the Double Effect applies. But since this involves the obligation to *do* something to prevent the person's dying, then by Conclusion 10, that you don't have to do damage to yourself to prevent damage to another, the fifth rule of the Double Effect is fulfilled if actual damage would be done to you if you gave up enough food and water to keep the other person alive. Obviously, you *could* give up the food in this case, keeping the damage to your health out of your choice; but you *need* not, if its relinquishment will positively harm your health. Note here that "harming your health" must not be taken to mean "becoming less fit," because "fitness" in that sense is a value; it must mean going below the "zero" or minimum of health below which a person is *dehumanized*.

When I say "what is necessary to *sustain* life, I mean those objects and acts that *every* human being needs *all during life* to maintain

#### Section 1: Rights

biological equilibrium: air, food, water, enough clothing and shelter to keep from dying of exposure, and so on. You may *never choose* to deprive any human being of such things, whether the human being is a fetus, an adult, or a very old and sick person. *As long as a human being is organized as a unit*, then he has the absolutely inalienable right to these necessities.

However,

# Conclusion 25: If a person is *dying*, then his death *need not be postponed* if the Double Effect applies.

There is a difference between sustaining life and postponing a death when the death is the likely end of a process that has started in the body. That is, if a person has a disease (or disorder) that has been shown in the past to be fatal, and for which it is not *reasonable* to expect that he will recover, then he is in the process of dying. This is different from saying (a) that we are all "in the process of dying," on the grounds that our physico-chemical nature as such seeks its ground-state equilibrium, as I discussed in Chapter 2 of Section 1 of the third part. As I said there also, our nature as living fights this tendency and maintains our super-high biological equilibrium, so that the body as a whole is not "headed toward" death and in principle would go on indefinitely in its biological equilibrium. Nor is it to say (b) that the body is attacked by some destructive energy, and the unifying energy is faced with a temporary setback in trying to cope with it. Nor does it mean (c) that the unifying energy cannot cope with it unassisted, because we are persons who interact with others, and if medicine which can lead to recovery is refused, this would be the same as refusing food and water. If, for example, you have strep throat and I can get you access to antibiotics without causing damage to myself and I refuse to do so, I have killed you.

A person is in the "process of dying" when *there is reason to believe* that the unifying energy *will not* be able to cope with whatever is attacking the body, even with assistance from others, and will ultimately succumb to it.

In this case, there is no reason to say that death can be *prevented*, and health-care measures taken only *postpone* the death—even, sometimes, indefinitely—by slowing down or stopping the process. In other words, in these cases, you can't do anything to keep the person from *dying*, but only to keep him from dying *now*.

Note that I am not using the traditional terminology here about taking "extraordinary means" to keep a person alive as opposed to "ordinary means." If a person is paralyzed but otherwise healthy, then obviously someone has to put the food and water into his mouth; and this is an "extraordinary" way of supplying food to someone, even if it is not very difficult. But that isn't the point. The point is that food and water are *life sustaining*, and everyone needs them, whether administered in the ordinary way or not; and giving a dying patient a pill is *death postponing*, even though you may just hand it to him and he swallows it on his own. So the question is not whether the "means" are ordinary or not, or easy or difficult to administer, or even whether they are expensive or cheap; the question is whether they are life sustaining or death postponing.

The rule of thumb here is this: If a person is dying and you remove something "keeping him alive," what does he die of? If the answer is "the disease," you have simply not postponed his death; if the answer is "starvation" or some such thing, you have killed him.<sup>16</sup>

<sup>&</sup>lt;sup>16</sup>If a person is dying from a disease of the nutritive system, it may be that depriving him of food does not kill him, because he dies in fact of the disease which prevents his nutritive faculty from working. This is a very tricky thing to apply, but there are cases in which it is true.

### Section 1: Rights

In any case, the issue in whether or not to use these death-postponing measures is not whether the person dies or does not die (because the evidence says he's going to die in any case), but in *what kind of life he has in the interval between now and the time he dies. That* is what you are giving him by giving him the death-postponing medicine or service.

Now then, if you refuse the death-postponing medicine or service, then you are depriving the person, not of life, but of a certain length of time of a certain kind of life; and the damage done by *this* deprivation is what is to be balanced against the damage done to himself and others by providing what is death-postponing.

It may very well be that all you are depriving the person of is two weeks of agony if you refuse to administer the death-postponing medicine; and so even if it is "ordinary" to give it, the person himself may think that escaping that much more pain is in fact *good* and not a "damage" at all; and so he and you may choose, not his death, but to *escape the damage in postponing it further*.

## Conclusion 26: If a person is dying and *wishes* not to postpone his death, his wishes must be respected.

You cannot connive in his *suicide*, and kill him either by administering painless poison or depriving him of food and water; but you *must* not violate his right to regulate the *kind* of life he has by forcing him to postpone an inevitable death longer than he wants it postponed.

And recourse must not be had here to the fact that miraculous or unforeseen cures are always possible. The person is dying if *reason* says that he will die, meaning that there is evidence for his death and *no* evidence that he *will* recover. In this case, you are *physically* certain that he will die, using the criterion of physical certainty that

we gave in Chapter 5 of Section 1 of the first part. The fact that it is theoretically possible that you *might* be mistaken doesn't, as I said, give you grounds for saying that you *are* mistaken.

If the wishes of the person at present are not known because he is unconscious, or even if he is conscious and wishes to remain alive, the Double Effect still applies. If, for instance, his being on a respirator deprives others who would be likely to recover from being able to use the respirator and recover, then he may be taken from it, even unwillingly, and deprived of his extra weeks of life, in order to give it to someone who can get back a normal life. If his use of death-postponing means creates a hardship in others that is equally great as or greater than the hardship involved in the deprivation of this extra time of life, then morally he may be deprived of this extra time in order to avoid the greater hardship.

It seems to me that with these distinctions in mind, many of the so-called "hard choices," meaning choices that involve emotional anguish, can be cleared up as to the morality of the issue, which is this: are you *choosing the death* of the person or not?

Note that if the issue is couched in terms of the "value of life," then it is completely obfuscated. *It does not matter how good it might be for a person to die; neither he nor anyone else can consistently choose his death for any good purpose whatever.* Hence, all the questions of killing someone who is severely crippled and in pain in order to avoid years and years of agony *are not morally relevant*. We simply do not have the right to choose anyone's death; and doing so, no matter what the purpose, brings eternal frustration on us.

But then, since fetuses are in fact human beings and also persons, as we saw in Chapter 3 of Section 1 and Chapter 6 of Section 4 of the third part, it also follows that they cannot be killed for any good purpose, even to avoid pain and anguish both to themselves and to their families.

## Conclusion 27: Abortions are morally wrong except, using the Double Effect, to save the *life* of the mother.

Rape or incest are not reasons justifying abortion. If, for example, the woman decided to have the baby and then found that he looked exactly like the rapist and chose to kill him because "she couldn't deal with it," then most pro-abortionists would find this reprehensible. The grounds they give usually are, "At this point, she can give him up for adoption." But the process of adoption is not instantaneous; it can take time to go through the procedures—and therefore, this argument also applies to the pregnant woman. Suppose Antigone had been the daughter of Oedipus and his mother Jocasta (actually, she was his daughter by a second wife) and she was a teen-ager at the time the discovery of the incest was made. Should she then have been killed? Then why could she be killed earlier?

No, the reason those favoring what they call "choice" do so is that they do not recognize the personhood of the fetus; but in this, they are as mistaken as those who kept Black slaves because they refused to recognize their personhood; because these pro-abortion people do not think women have the "choice" to kill that same living body ten years after birth under the same conditions that they would permit an abortion.

Now to answer those who say that abortions are *never* morally permissible because it is "direct killing" of the fetus and the "taking of an innocent life," let me apply the Double Effect.

Since we are dealing with self-defense here, is there *in fact* an attack on the mother's life. Let us say that she has weak kidneys, and the fetus's growth is putting such a strain on them that if he passes the third month of pregnancy, all the evidence indicates that she will die (and so will the fetus, because he can't survive—at least with today's technology—outside the uterus). So there *is* an attack on her

life, obviously not *intended* by the fetus, but occurring nonetheless.

It is, therefore, only on the "unjust aggressor" hypothesis that you can suppose that the "innocence" of the fetus is relevant here. But we saw that this is an untenable theory of self-defense. Hence, the fact that the fetus is not *deliberately* trying to kill the mother is morally irrelevant; the fact is that he is *doing something* which will result in the mother's death.

Now then, is the removal of the fetus from the uterus "direct killing"? Of course not. It is the fact that the fetus is at a stage where he can't survive outside that means that he will die. If, for example, it were possible to wait until the seventh or eighth month of pregnancy and then remove the fetus (by caesarean section, for example), then clearly this could be done and there would be no moral problem—even if he "needed" a month or two more to develop fully toward readiness for birth. Therefore, the removal of the fetus is not in itself morally wrong; it is the damage to the fetus in the effect of the removal that cannot be chosen. (Some fetuses do survive ordinary abortion procedures, by the way). As to the second rule, the good effect would be that one of the two survives; both will die if the fetus is not removed. The third rule is fulfilled because it is not by the death of the fetus that the mother escapes death; it is by his no longer being in the uterus. If the fetus survives the abortion, then the good effect has occurred without the damage's being done. Fourth, the mother must not want the fetus dead, even if he is the result of a rape; and *fifth*, the damage done by *not* having the abortion is that both die, while by having it only one dies.

Now of course, this supposes that the fetus is to be aborted in a way that does the *least* damage to *both* the fetus and the mother. The fact that pulling the fetus apart limb from limb as you suck him out of the uterus, or burning his skin off with the acid from a saline solution does little damage to the *mother* does not justify these

procedures; we don't even kill rats that barbarously.

I might point out here what is really behind the feminists' insistence on the "right" to abortion. If a woman can morally have an abortion only to save her life, she can never be the equal of a man in sexual irresponsibility.

That is, the abortion issue *is* an issue of "reproductive freedom." Since a man can impregnate a woman and never even know he has done it, but a woman cannot be impregnated without carrying a child, then the man, biologically speaking, can be sexually irresponsible in a way a woman cannot be. She must either take precautions in not getting impregnated (which precautions are, by the way, often immoral, as we saw in Chapter 4 of Section 2 of the fifth part), or she must be able to kill her child in order to avoid the consequences of indiscriminate sex; whereas a man need do nothing to avoid any physical consequences to himself.<sup>17</sup>

It follows from this that

Conclusion 28: The only way a woman can morally be the sexual equal of a man is if *society* brings consequences on the man if he refuses to help the woman he has impregnated and take equal care of the children he has caused to exist.

The "sexual revolution" has, therefore *freed the men*, not the women. Before it, if a man had sex with a woman, he realized that *he* was responsible for her being pregnant and that he now had to support both her and the child: that his act of sex made him married to this woman. After it, the man can simply say to the woman, "You were supposed to have taken The Pill; it's your problem, not mine."

<sup>&</sup>lt;sup>17</sup>Always supposing that there are no sexually transmitted diseases to be concerned with, of course; but that is a different issue from the sex itself.

And since women are claiming the "right" to an abortion, which is the power of life and death over their children, then obviously *they lose by this the grounds for demanding that the father accept any responsibility for the child*. As we saw in Chapter 5 of Section 1 of the fifth part, you are only responsible for what you have control over; and if the father cannot even keep the child alive, then the mother is claiming *absolute* control, and saying that the child is "hers and hers alone to do what she pleases with"; and then how can she demand that the father "accept responsibility"?

No, the sexual revolution and the feminist movement have put women into a much worse condition than they were before, because they have removed social pressure and laws forcing men to take the consequences of their sexual acts, and they have reduced both men and women's sexuality to the level of naked biology, where women are not and cannot be on the same level as men. Instead of "liberating" women from "anatomy is destiny," the feminist movement has inadvertently *removed* what in fact liberated them from the destiny of their anatomy: the *social* consequences of men's using sex irresponsibly.

To resume, then, our enumeration of rights, the *second* human right a person has is *the right to physical integrity, including health*. Therefore,

Conclusion 29: It is morally wrong to deprive a person of some ability he has because of his genetic potential, either by direct action such as removing the organ that is the faculty in question or by refusing to provide what is *necessary* for him to exercise a function he has by his genetic potential.

Once again, these actions are subject to the Double Effect. Since a person cannot choose his own damage, then he obviously has an

absolutely inalienable right to his integrity and health. As I mentioned in Chapter 4 of Section 2 of the fifth part, he can allow himself to become unhealthy only if he can keep the unhealth out of the choice when there is a worse effect from what he is doing that might make him unhealthy.

Similarly, you can do physical injury to another person or make him unhealthy when you are defending yourself against something equally bad. We will see later how government can do things that cause injury if this is the only way to avoid greater injury to the citizens or to the society itself. It is, therefore, at least in principle possible for government to penalize a sex criminal with castration if (a) this would actually prevent him from having sex at all again (not simply prevent him from impregnating anyone), and (b) this deprivation of the ability to have sex is actually the least severe penalty that would ensure that society could be protected against this type of crime. I will try to show in the chapter on society how the authorities in a society can avoid choosing the harm when the crime has already been committed. It *is* possible; but let us not discuss this here.

The important thing with respect to the above conclusion, however is not the negative side, which most who understand the Double Effect would admit, but the last clause. What it says is that if in effect you are making a person unhealthy or keeping him so by withholding the means for him to get healthy, then you might just as well be causing his unhealth. Therefore,

# Conclusion 30: A human being has an inalienable right to health care.

That is, if he is unhealthy and health care is available to him, he cannot morally refuse it, because this would be to choose his own

damage, which he cannot morally do—unless the Double Effect allows him to keep the damage out of the choice by avoiding something else just as bad. So the right is absolutely inalienable.

But in general, this right is not a right against one specific person, except in the case of a child who has the right against his parents. If there are many people who can provide health care to a person who would otherwise become or remain unhealthy, then no definite one of them has the moral obligation to provide it for him. The reason is, of course, that if you don't do it, he won't necessarily become unhealthy, because someone else might.

Insofar, of course, as you know that in practice no one else will provide the health care, then you have an obligation to provide it; but even here there is another qualification, which we saw under Conclusion 30 of Section 1 of the fifth part, that a person has no moral obligation to do himself damage to avoid greater damage to others. So if some harm is going to come to you (or could reasonably be expected to come to you) in providing health care to another, then you have no moral *obligation* to provide it.

There must be evidence, however, that real damage is likely to happen to you in this case; and depending on the seriousness of the health problem you are considering taking care of, the likelihood must be more or less great. The point here is that you would have to be choosing *merely* to avoid damage to yourself and keeping the damage to the other out of the choice. If the damage to yourself were something like the risk of a cold, and your action could prevent someone from having a leg amputated, then it would be the rare conscience, I would think, which could keep the damage to the other out of the choice.

A person, of course, who chooses to *get into a health-care profession* has chosen as his business taking care of others' health; and since it is known beforehand that this entails risks to the provider's

### Section 1: Rights

own health, he cannot use this excuse without applying the Double Effect more strictly: the damage he is avoiding (including the likelihood of incurring it) must be at least as great as the damage his avoidance would cause in the other person. Why? Because, once he has chosen this profession, those who have a right to health care have a right in general *against him and others of his profession* for this service.

But since the patient has an inalienable human right to health care, does this mean that the providers have to perform their service free? No. I mentioned in Chapter 3 of Section 7 of the fourth part that health-care providers have a right to compensation for their services; and I will discuss what this entails in the next section, when I treat of compensation. If I went into more detail here, I would be able to treat only half of the subject.

All that I am saying, however, about professionals' having an obligation to run greater risks than those who haven't chosen this as their service also applies to others like the police and fire fighters and even garbagemen and so on.

Further discussion of rights would get us into economic rights, such as the right of ownership, the right to compensation, the right to the necessities of life, and into social rights, such as the right of partners in a marriage to sexual intercourse, the right of parents to be obeyed, the rights of citizens against government, and so on.

But I will leave those to the future chapters where the particular relationships involved will be discussed. Let this be enough of a spelling out of rights in general and of the broadest human rights.

Section 2 Economics

## Chapter 1

#### The basis of economic activity

where have seen, then, the negative side of what I am calling the "economic relationship" based on self-determination: we are contradicting our own selves as self-determining if we interfere with the self-determination of others. As I mentioned, the positive side of this relationship is that if we want another self-determining being to help us in our self-determination, we have to help him achieve his own goals, and so compensate him for wasting his time in helping us.

It is this that is the basis of economic activity, not, as the economics textbooks tell us, "the allocation of scarce resources to fill insatiable human needs." There's a difference between economic activity and practical activity. Robinson Crusoe, stranded on his deserted island, was certainly engaged in marshaling the things he found on the island to see to his shelter, food, and clothing; but this was *practical* activity than the week-end woodworker is engaged in economic activity when he goes down into his shop on a Saturday morning and picks out some wood from his bin and makes his kids a playhouse. He *did* engage in economic activity earlier when he bought the tools and the wood; but once he has them, his "allocation" of these resources to fit his "needs" (his wants) is simply practical activity.

Let me, therefore, make the following distinction:

## Practical activity is use of things to be able to perform

essential acts or achieve one's goals.

*Economic activity* is engaging in transactions to be able to perform essential acts or achieve one's goals.

"Essential acts" and "goals" are defined, of course, as they were in Chapters 2 and 3 of Section 7 of the Third Part, when discussing necessities and values, which, as you will recall, are means to each respectively. The point here is that you don't have economic activity unless you have a transaction between people; and a transaction, as we will see, involves what I indicated above: each person gives something up (either some object or money representing an object, or some act of his), and each gains what the other gives up. Hence, economic activity involves precisely a relationship between people, not a relationship between people and the things of this world.

For instance, you are engaging in a transaction if you swap a day of teaching your friend about Plato for a day of his teaching you about the intricacies of football. Neither of you uses any objects of this world; you simply tell the other person what you know; but you have made an exchange, which could even have been one involving money, as if, for example, he had taken a course from you on Plato, and then you signed up for a course from him on football strategy. Any economist would agree that the latter would be economic activity, because money changed hands (and, as it happened, changed back again); and all I did in the former example was eliminate the money and use barter for the transaction. So economic activity is not necessarily the allocation of resources (in the sense of material things) at all, and not all allocation of resources (when you already own them) is economic activity.

1: The basis of economic activity

## Chapter 2

## The Six Great Myths

B subject of the positive side of the economic relationship, begin by mentioning the Six Great Myths<sup>18</sup> that have underlain all economic theory since Adam Smith, and which, since they are presupposed as "obviously true" and are in fact false, have led to all sorts of erroneous conclusions, not only in capitalist economic theory, but also in Marxist and socialist economics generally.

#### The First Great Myth: All men are created equal.

We saw this in the preceding section, where I explained why it is a myth and not something true. Its economic impact comes in demands of "equal pay for equal work," which takes into account, as we will see, neither the unequal productivity with equal effort of the workers, nor the unequal disposable income of workers with unequal dependents; so that what sounds just and fair actually can cause injustice.

<sup>&</sup>lt;sup>18</sup>I am obviously using "myth" here in the ordinary sense of something untrue that is believed to be true, not in the Platonic or religious sense of an imaginative presentation of something that is at least esthetically true.

## The Second Great Myth: We are never satisfied.

This is illustrated in the beginning of the *Confessions* of St. Augustine: "You have made us for Yourself, Master, and our hearts are restless until they rest in you." The assumption has always been that it is impossible to satisfy the human being (in spite of the fact that by far the majority of people, once they reach middle age, never choose to do anything about their "dissatisfaction"). This was, of course, made into a kind of biological law by Henri Bergson in *Creative Evolution*, and is a view which, as I said in Chapter 5 of Section 1 of the third part, is directly contrary to the evidence from living bodies and especially the mechanics of evolution itself. And, of course, the medievals made it a kind of pseudo-law of metaphysics when they said that the "purpose" of all of creation was God Himself, and everything was supposed to be a process somehow headed toward his perfection. I discussed this in Chapter 5 of Section 3 of the second part.

And we saw under Conclusion 4 of Section 4 of the third part that there is no built-in goal for human life, but that we set the goal for our life by our choices. Implicit in this setting of goals for ourselves is the fact that the goals are *not* infinite and not in principle unreachable; and when we reach them (are *successful*, as I defined it in that same chapter), then we have no further goal except to maintain the equilibrium we have reached. It is not that we immediately then set new goals for ourselves. Far from it. Most of the time we have to be dragged, kicking and screaming, toward any kind of change.

So let us bring out into the open what has all along been implicit in what I have been saying about human freedom and human goals:

Conclusion 1: The goal of each human being is a finite

# complex of activities, reachable in principle, and in general reachable in practice if he should "get the breaks."

It is, of course, *possible* for a human being to set an infinite goal for himself (and want to be God or a pure spirit); but this would be immoral, because in fact we can't achieve this even in principle.<sup>19</sup> It is also possible to set a goal that is reachable in theory, but cannot be reached in practice during a lifetime (I myself have such a goal: that of changing the way the world thinks for the next couple of thousand years). But it is the rare person who sets goals like this, and he would probably have to be a nut like me, whose theory allows him to think that even that goal is actually reachable, even if not during this stay on earth. I mentioned in discussing what life is all about in Chapter 4 of Section 4 of the third part that the tragedy of people in the ghetto is not that they can't achieve their goals on earth, but that, since they realize they can't achieve their goals in this life, they don't set them, and adjust their aspirations to what they find achievable. This is the case with most people.

I don't want to say that there aren't greedy people, nor that there aren't people who, upon achieving one goal, immediately start reaching higher. What I am saying is that they are rather rare. I don't know very many Ph. D.'s, for instance, who constantly pursue their studies for the sake of knowing more and more. They have to be motivated to keep learning by university policies of "publish or perish," which is another way of saying that if you don't keep

<sup>&</sup>lt;sup>19</sup>Though we can be given it as a gift, if the Infinite Being chooses to share his life with us, as I believe he does. That is what I think Christianity is at bottom all about. The point is that we cannot *achieve* it in the sense that it can be a goal for us. We can choose as a goal to act *consistently* with the gift (and so to desire, as the main purpose of our life, a very high place in heaven); but this is not the same as choosing to be infinite as a goal in life.

advancing, you'll be worse off than you are now. You would think that, having the highest of human acts as their goal, they of all people would want more and more of it, but it's not the case, generally speaking.

Those who hold the Augustinian-Thomistic view that the possession of God is the purpose of our lives because our wills, being attracted to "the good" as abstractly understood, can't be satisfied with anything less than the possession of infinite goodness explain away the manifest reluctance of just about everybody to strive after more and higher acts on the grounds of our fallenness.

For the type of person imbued with this idea (and that includes most Christians), there is something rather sinful in being satisfied with what one has or the way one is. Back in the middle ages, perhaps, this was not so pronounced, because there was the notion of "conformity to the will of God," which counseled contentment with your lot here until you crossed over to the Other Side; but with Calvinism, discontent was rather a virtue than a vice. We *ought* not to be satisfied with the way we are, because that indicates that we don't have our sights set on the Infinite Beyond.

But that, as I said in discussing what life is all about in Chapter 4 of Section 4 of the third part, means that we have freedom but no room to exercise our freedom except to rebel, because the "greater good" is what is what we ought to be seeking, and if we do something that is reasonable (i.e. good) but "lower" than the greater good, then we are turning away from the goal that is established by our nature—or are being immoral.

But if, as I also said, we are free in that we can set goals for ourselves, then it follows that there is absolutely nothing wrong with being satisfied when we achieve them. And this is consistent with the way we observe people to be; we don't have to assume that the complacency of so many is due to their fallenness.

## Part Six: Modes of Interaction

The economic implications of this are enormous. It says that we aren't by nature infinitely greedy, and therefore, it is does *not* follow that people are always trying to maximize their own benefit when they act. This, I think, is significant enough to make it a formal conclusion:

## Conclusion 2: It is not the automatic tendency of people in transactions to maximize their own gain.

People will be saying that I am now being hopelessly naive. But this is the economic version of its being sinful not to be ever striving for more and more, and passing off the manifest behavior to the contrary of most people as a kind of "aberration"—either that, or the question is begged, as it was in the issue of freedom vs. determinism, discussed in Chapter 6 of Section 3 of the third part.

That is, when a person goes shopping and rather than be bothered assuring himself that he has got the best bargain possible, he simply picks an acceptable item off the shelf and pays whatever is asked, this is called "maximizing his own benefit" because he is saving time, which he considers more valuable than saving the money by price comparing. When two people are haggling over some item and one gives in and takes a loss, he is still said to be "maximizing his own benefit," because he considers himself better off for striking the bargain than striking one to his advantage. And so on. Using that definition of "maximizing your own gain," there is no action you could perform that would not be one of maximizing your own gain.

The idea behind defining the term in this way is that, since we always act to maximize our own benefit, then obviously whatever we do has to be an instance of maximizing our own benefit; and even if it seems that we have deliberately done the opposite, this is because we prefer this action to the other one and so are actually choosing to

maximize our benefit. In the same way, those who hold this position say that when we act out of love for someone else, we are actually increasing our own satisfaction, because it is more satisfying to ourselves to perform this act than not to do so; and so to say that we were doing it "purely and simply for the other person" is supposed to be false.

You see how insidious this view is? Because of a *theory* that it is irrational to do anything except for your own gain, it is concluded that we never *do* do anything except for our own gain; and then when a person claims that he did something for some other reason, we call him a liar and a hypocrite—or self-deluded—and therefore, we claim that we know more about his motives than he does.

But on what is that theory based? On the notion that a person can't be free; that the more attractive alternative determines his action. Then you stand on your head to say that every alternative the person chooses was actually "more attractive" to him at the time, in spite of the fact that he said he recognized that it wasn't ("I'll hate myself in the morning for this") and did it anyway. In that case, as I said in the discussion on freedom, there is no such thing as compulsive behavior.

Two remarks have to be made at this point, however. The first is that people have been bombarded with this by economists ever since Adam Smith (and even before that by preachers from the pulpit and all of the supposedly "common-sense" philosophers who hold that of course we're not really free that what we really do is maximize our own gain) and that we *ought* to be doing this, and that we're bad businessmen if we don't do it, and even bad Christians if we don't do it. It stands to reason that many people who have no particular desire to maximize their benefits will tend to do this if for no reason than not to seem naive or bad businessmen.

But in point of fact, this rule is honored in the breach by most

small entrepreneurs, who are the majority of businessmen. They want to make a decent, even a comfortable living from what they are doing, but they aren't interested in making as much as possible from their business (though they wouldn't take it amiss if they got fabulously rich by what they are doing. The point is that this is not really a goal they have). If someone else gets ahead of them by being more astute, this doesn't fret them,<sup>20</sup> because their business is achieving the purpose they see in it.

And even larger firms are doing the same thing. I am sometimes appalled by the wasteful, extravagant practices that go on in the businesses I have contact with: adding staff that isn't necessary, taking trips that don't benefit the business, and so on and so on. The boss has a "thing" about gadgets, perhaps, and so a lot of the money in the business is plowed into "equipment" that can only marginally affect the way the business runs. Further, the very best quality equipment is bought, when something much less expensive will do the job just as well. How many companies there are with laser printers printing with nothing but Courier type, making everything look like a well-typed letter. Why? Because there's all this money lying around, and you might as well spend it this way as some other way. You can't really change the market price for your product or for wages (something impossible, according to some economic theories), the government is going to give you a tax break for the equipment, and so why not? I even find this tendency in myself in the minuscule textbook publishing business I have to supply my notes in book form to my students. I buy fancy fonts to make the pages look nicer, because I like the way they look-and if I make too much profit, the government is going to charge self-employment tax. I'm not

<sup>&</sup>lt;sup>20</sup>Unless, of course, their being surpassed is likely to do them damage, and make them worse off than they are now.

interested in making money; I just have fun with what I'm doing.<sup>21</sup>

The other remark is that there's a germ of truth in what the "maximizers" say. Since there *is* no objective "good," and nothing objectively important, as I said in Chapter 10 of Section 5 of the first part and Chapter 2 of Section 7 of the fourth part, then we *create* the "goodness" in what is good by making choices which have the particular thing as their goal. In that sense, it would necessarily follow that what we choose is better (for us) than the alternative, or more important than it, no matter what it is. And of course, what this means is that we are then "maximizing our own benefit," or at least our own perceived benefit.

But that doesn't mean that we have a *tendency* to do this maximizing; taken in that sense, "maximizing your own perceived benefit" is a tautology which has in itself nothing to do with "striving to be better off." Even the person who is immoral, knowing that what he is bringing on himself is his own eternal frustration, has this frustration as his goal, and rejects the alternatives; and so in that sense would rather be in hell than in heaven. I mentioned this in passing several times. But then this destroys all meaning to "striving to be better off," since there is no sense in which it would be possible even in principle *not* to "strive to be better off," and everything, loss, maiming, death, torture turn out to be "better" by the mere fact of someone's choosing them.

<sup>&</sup>lt;sup>21</sup>In that sense, I'm "maximizing my own satisfaction." But for the record, let me say that I'm more interested in the students' having as easy a time of it understanding what I want to tell them than I am in looking at "what I have wrought." Even this book, which will doubtless not be seen (still less read in its entirety) while I am alive, is not done mainly for my satisfaction, but so that my ideas will be "out there" after I die, accessible to the people who can use them to their advantage. Who knows? I may not even get the credit for it; and while I feel a bit of a twinge at this, it is not enough to make me stop with the chore of writing.

I have no quarrel with this; in fact, it is what I mean when I say that goodness is subjectively based. But the view that I am criticizing wants it somehow to mean that the person perceives that he will *objectively* be better off for whatever choice he makes, and that he can mistakenly choose something in order to be better off and find that he is worse off afterwards. The only way this can happen on my view is that the object in question doesn't have the value of leading to the chosen goal, and so the goal isn't reached; not that the person mistook the *goal* as "good" when it wasn't. A goal can't be anything but good, by definition (as a matter of fact, by a definition that stretches back as far as Aristotle).

What's going on here is that there is a confusion in two senses of "being better off": (1) achieving the goal, whatever it is, that you set for yourself, and (2) being *less limited* than you are now. "Maximizing your own benefit" really is intended to be taken in the second sense, that we are always trying to get more wealth, more power, more freedom, more pleasure, more friendship, and so on; and that we never act unless we think that we will on balance have more of these things than any of the alternatives. This is vastly different from saying that we set goals for ourselves with or without any consideration of whether they are on balance an objective increase in any of these areas, let alone based on a calculation of the relative increases and decreases in all of them.

I submit that we are not such calculating creatures. We imagine ourselves as different, and head toward that imaginary self, often without stopping to consider whether on balance this means a *greater* life. It is a "better" life by definition, but that does not mean that it is greater than the alternative. And we often *deliberately refuse* to consider the objective gains of one course of action as opposed to the others, because the course of action that makes us objectively less limited doesn't get us to the goal we have chosen. Many is the

person who could benefit from a college education or a Ph. D. who stops going to school because he doesn't want to be that kind of person, no matter how much less objectively limited he would be because of the education he would be receiving.

You can't have it both ways. You can't say that a person actually wants to be less limited than he knows he can be and simultaneously say that *because* he chose to drop out of school, he *thinks* that he is being less limited for doing so.

But I have belabored this point enough. Suffice it that I think that my position, that we set finite goals for ourselves and that we're satisfied when we achieve them (in the sense that we don't *choose* to go beyond where we are), has as much going for it as the view that we're eternally striving beyond ourselves.

# The Third Great Myth: The market price expresses the real, objective value of a product or service.

The fact that this is false will have to be established at some length later. Hints that it is false are the following: First, it is a variation on the fallacy above, because it assumes that values and importance are objective. Values, as I said in Chapter 2 of Section 7 of the fourth part, *are* objective in the sense that they actually lead to the (subjectively adopted) goal (if the object doesn't lead there, it doesn't by definition have the value); but they aren't objective in the sense that they can be compared with one another in such a way that one object is objectively "more valuable" than another. In that sense, as I said in that chapter, the comparison is on the basis of the importance of the goals they lead to—and importance is subjective.

Secondly, the market price is simply the price at which all the people offering a product or service can sell all they want to offer *at that price*, and all the people wanting to buy the product can buy all

they want *to buy at that price*. It doesn't mean that all the sellers sell all they have (because some won't sell except for a higher price), nor that all the buyers can buy all they want (because some might buy more if the price were lower, and others might want the item but not at that price and so don't buy at all).

So it doesn't follow that the accident that the shelves get cleared at this price makes the price the *real* price, expressing the real value of the item. This would imply that those who were willing to pay a higher price and got the item at a bargain didn't value it "truly"; and yet, if the sellers run out and prices go up, then suddenly their value is the objective one. Or look at fads. Pet rocks were selling at a rather high price a while back (Yes, I mean a rock that you buy to have as a pet); and then suddenly no one wanted one any more. Of course, why anyone would want to buy something he could pick up in his back yard might cause you to wonder; but the fact is that for several months people bought those things, and then didn't. Did that mean that for those months, the objective value was whatever they sold for and then suddenly they became objectively worthless? That's a funny kind of objectivity.

Again, this is one of those question-begging definitions, of which economic theory is replete. *If* the freely established market price determines the real, objective value of the object, then obviously its objective value fluctuates with the vagaries of supply and demand; and unless, like Marx, you attempt to show that supply and demand have some underlying rationale (the "cost of production" in his case), then your real value turns out to be nothing but the whims of the multitude.

But let us leave this for the moment and save further discussion of it until we discuss in what sense the seller finds a value in what he is trying to get rid of, so that a transaction can take place. What I intended here is just to awaken you to a prejudice you probably have,

and show that you can't just take it for granted.

# The Fourth Great Myth: economics is subject to mathematical analysis.

The fallacy behind this myth, actually, is the preceding one. If you take it that the market price of something is something objective and real, and that it expresses the "true value" (or the "exchange value"<sup>22</sup>) of the item, then of course, since the price is a certain amount of money, you can do mathematics with prices and come up with "indifference curves" and "equilibrium prices" and all the rest of it. Since you have curves, you can also use the calculus to do your figuring as if they represented something continuous like the path of a movement, which can be divided into indefinitely smaller parts. The result is that you can study higher mathematics and apply it to your science, and everything looks so numerical, objective, accurate, and learned.

But I'm sorry to say, it's all a sham. In the first place, there's the obvious fact that the items sold are units, and you either sell one or you don't; and so you can't divide the supply infinitely, nor the demand; and since the price of each item is a finite amount, you can't divide that infinitely either. Hence, the calculus, which deals with continuous quantities (because otherwise, you can't approach the

<sup>&</sup>lt;sup>22</sup>Note that I would contend that the "exchange value," or the "market value" of something is not a value at all. It expresses a *price*, not a value, and it might be translated, so to speak into a value by the fact that a person might find that paying the price would let him get something (the valuable object) whose value would lead him to some goal that is more important than something else he could spend his money for. But in itself, the "market price" is, as I said, just the price at which it happens (at the moment) that all sellers willing to sell at that price can sell all they have and all buyers willing to pay that price will be able to get what they buy.

0/0 we talked about in Chapter 3 of Section 3 of the fourth part), doesn't really apply. So when you talk about "marginal increases" and "marginal differences," this is a pure mental fiction; and calculations based on them will necessarily be rough approximations to the real world, not accurate descriptions of it.

But more important is the fallacy that if you're dealing with numbers, you're being objective. I mentioned this as a fallacy in discussing observation and hypothesis in Chapter 2 of Section 4 of the fourth part. Nine thousand instances of subjectivity do not add up to one iota of objectivity; and the fact that at the moment pet rocks can be sold for two dollars, because there are enough fools around to buy them to keep them moving off the shelves, does not mean (a) that somehow this sum of subjective evaluations becomes an objective value, or (b) that tomorrow the evaluations won't be totally different.

Each evaluation by a purchaser is completely independent of evaluations by any other purchaser; and in fact, what one purchaser is comparing the item with (what giving up the money means in terms of what goals he has to give up or postpone) is completely different from what every other purchaser is comparing it with. Jones is giving up a hamburger; Smith is giving up a box of pencils. Jones wouldn't give two cents for pencils, and Smith doesn't like hamburgers and wouldn't take one as a gift. How can the accidental fact that these two happen to put down two pieces of paper with George Washington's picture on it mean that the *value* it has is objective? Remember, the market price is the *result* of the sum of individual buying choices, not something that *establishes* these choices, even in Marxist economics, because the price depends on supply and demand at any moment, and only in the long run is it dependent on cost of production.

And the success of economists at predicting what will happen to

the country's economy is an excellent verification that they're all dealing with smoke and mirrors when they apply mathematics to what is happening. They claim, of course, that the poor rate of predictability is due to the complexity of the situation, involving millions of choices by millions of people. But statisticians do quite well predicting automobile accidents on holidays, weather forecasters do rather well at predicting the weather, and know how far into the future they can predict it—because there are in fact underlying constants in these things which show up through the otherwise random behavior, as we discussed in discussing experiment in Chapter 3 of Section 4 of the fourth part.

But in economics, the only constants are necessities, not values, because the goals the values lead to are freely chosen, and are not something built in by nature. And this leads us to

# The Fifth Great Myth: Necessities are just very valuable values.

I discussed why this was a fallacy in Chapter 3 of Section 7 of the fourth part, where I showed that necessities can't be put in the same class as values, because we are free with respect to being better off, but we have a moral obligation not to choose our own damage—which *can* be established objectively, because it contradicts our reality.

Hence, there would be a statistical way you could predict the price of necessities, because (a) one who lacks a necessity has to have enough of it so that he is no longer in contradiction with himself, and (b) he cannot morally refuse it, no matter what values he has to give up to get it. This means that the demand for it is "inelastic": a certain amount of it is needed at any given time, irrespective of what the asking price for it is.

## Part Six: Modes of Interaction

Of course, things are complicated by the fact that practically all necessities are not pure necessities, but can be values also. We need enough water to keep from dehydration; but beyond that, we can use it to wash with or to swim in. We need enough gasoline so that we can get to work and back; beyond that, we can use it to travel to Cleveland to see Aunt Marge. We need enough heating oil to keep from freezing in the winter; beyond that, we can keep the house warm enough to go around in shirt sleeves. We need enough health care so that we're not sick; beyond that, we can use it to become fit. Only the necessary aspects of these things have inelastic demands attached to them; the value aspects will tend to fluctuate with the price, as people trade off the goals they permit. My point above is that you can find where the necessity begins in a given culture by finding out where the demand becomes inelastic.

But this isn't really what's important here. It's that the idea that necessities and values can be put on the same scale is the part of economic theory that has the most pernicious consequences when put into practice. Since from the buyer's point of view the "value" of a necessity is infinite (while, as we will see, from the seller's point of view, it is finite), then the market price can be whatever the seller wants it to be—as we see nowadays with health-care delivery, which is bankrupting our country. Sometimes this works in reverse. Since working for somebody is a necessity for those who are incompetent as entrepreneurs, then a free market in wages can result in a market price that, as Marx's theory supposes, "hovers around" survival.

Marx tried to solve the problem by in effect supposing that everything was a necessity, and values were less necessary necessities; but that leads to the poverty of nations, as we have seen demonstrated.

I think that by far the more reasonable theory is that necessities and values are incommensurate, and therefore must be treated

entirely differently as far as economics goes; and we won't solve the mess economies are in (since all of them follow some theory or other) until this distinction is recognized and its implications followed. Interestingly, the "maximizing one's own benefit" fallacy is hidden in the failure to make this distinction. The assumption is that you can compare losses and gains and offset a loss by a corresponding gain. Thus we have people suing companies for a million dollars because they lost an arm from the company's product—meaning that they think that a million dollars can "make up" for the loss of the arm. Nothing in God's world, no value under the sun, can make up for not having an arm; because values all deal with freely chosen goals, *presupposing* that you are already human; and losses such as this dehumanize you no matter where you set your goals.

I am not saying that those who were injured shouldn't be able to collect damages; it is the attitude that a certain amount of "good" is the inverse of a corresponding amount of "bad" that is the fallacy. Avoiding loss is an entirely different procedure from pursuing gain.

And, in fact, what motivates a great many people is avoiding trouble, not striving to be greater. Bureaucrats are perhaps the prime examples of this; and one of the reasons why Communist societies don't work is that everyone is a bureaucrat. Nothing productive gets done, because the only thing that operates in a "command" economy is avoiding trouble; even if you *want* to help others, you're not going to be allowed to do it by your colleagues, and you'll suffer for it because you'll make them look bad, and they're interested in avoiding trouble.

So here again we have a fallacious conclusion of an *a priori* theory masquerading as a fact of observation; and it is because so many people take it as a fact and never consider questioning it that both capitalist and socialist economies are in a mess.

## The Sixth Great Myth: Economics is amoral.

What is behind this myth is that economics as a science is based on the way people *do in fact* behave, and is "descriptive, not normative," while ethics is "normative" and therefore prescriptive. Secondly, since economics is supposed to be based just on observations of what people actually do, it is "objective," and since ethics "deals with moral values," it is subjective. Thirdly, the moral prescriptions ethics deals with are assumed to be "tacked on" to economic activity with no relevance to the theory itself, which doesn't prescribe any activity.

But in fact this is nonsense. In the first place, we have seen five hidden assumptions that form the foundations of economic theory, and they are not based on observation of what people do, but on some kind of mysterious insight into what they "are really doing" (such as maximizing their own benefit). Actually, these foundations are a view of *human nature* that is a *philosophical theory* (basically, that of Locke and Hume) that is simply accepted as "observed fact" when it has very little to do with observed fact. Economics based on the foundations I have described in the Great Myths is *not* descriptive, therefore.

Secondly, to say that economics as taught in colleges is not prescriptive is either hopelessly naive or downright hypocritical. Since economic activity is supposedly to maximize the benefit of the agent, who is assumed to be infinitely greedy, then what the textbooks tell you people "really do" is just that; and so what they tell you is that if you're going to engage in economic activity properly, you're going to have to do this and this and this in order to maximize your own benefit.

For instance, it is supposedly bad *economics* to hire more workers after you've reached the point of diminishing returns. If the salary

you pay Jones increases output so that the profit you get from the new output is greater than the salary and expenses you pay to have Jones working for you, you hire him. At the point of diminishing returns, the amount you're paying Jones is equal to the amount of profit you get from hiring him; and so it's a tossup whether you want him working or not. After that point, you're paying more to allow Jones to work than the amount you get out of having him work for you, and so it makes no economic sense to hire him.

Oh no? What law says that the *only* thing that makes *economic* sense is to have the balance sheet come out in your favor? That you *can't* make economic sense out of the fact that one of the goals of your business is to give people an opportunity to work?

Oh, but wait a *minute*, Blair! It might make *ethical* sense to do this, but we're talking *economics* here! Precisely. But it's only if you're talking economics *on the assumption* that the only reason business is engaged in is profit for the entrepreneur (which is based on maximization of one's own benefit), and that the business *in itself* has no other goal but this that you can say that it makes no economic sense to have workers who cost more than they produce.

Hence, people who hire extra workers and lower their profit margins are assumed not to know economics very well, or are doing bad economics to do good ethics.

And economics isn't prescriptive? When you say that this sort of thing is bad economics? That to consider the humanity of those you have working for you is *inconsistent* with a business which *of its nature* has people working for it? That it's *only* good economics when consideration of working conditions and so on actually results in greater productivity and higher profit?

That's true only on the assumptions that I have called the Six Great Myths. So economics masquerades as (a) ethically neutral, when in fact good ethics comes out as bad economics, and (b) as not

prescriptive when in fact when it talks about practices which are "good," economically speaking, or "bad," economically speaking, it is being *normative*. What else does "normative" mean except talking about "good" and "bad"?

But let that be enough about fallacies in the hidden—and sometimes not so hidden—assumptions of economic theory, and let us move on to how I think economic activity emerges from human reality as I have described it in the earlier parts of this book.

# Chapter 3

## Ownership

In the early days of economic theory, there was a great deal of discussion on "private property," and whether there was a right to own private property; in fact, you might say that the Lockean way of establishing the right was the foundation of all of modern economics. But you don't find much of this in economic textbooks any more, in spite of the fact that capitalist economics assumes that we do have the right to own private property and Communist economics assumes that we don't. I suppose that economists think that "that's philosophy" or "that's ethics," the first of which they want to equate with mysticism or fairy stories, and the second, as I said, with "subjectivity" and "normativeness."

But the first great economist, Adam Smith, was an ethician, in fact; and it was his Humean "moral-sentiments" ethics (developed from Locke's notion of basic rights) that was the underpinnings of his economic theory. So let us look a bit into the history of the notion of the right of ownership.

From the earliest of times, people have been ambivalent about ownership of things. Plato, in *Republic*, in fact declared that for his defense force and ruling class, there was to be no private ownership of things, including housing, food, (and, interestingly, families), because this fostered an attitude of "this belongs to me" and "I belong to this small group" which was opposed to the job of these

people: that of seeing to the protection and well-being of the society as a whole.

Jesus, too, advised the young wealthy man to sell what he had and give the proceeds to the poor and then to follow after him; and in the early Christian community, Luke says in *Acts* that "they all owned everything jointly....[T]here was not one single pauper among them, since all of the ones who were owners of land or buildings sold them and brought the price they got for them and put it down in front of the Emissaries, where it was then given out depending on the needs of each."

This, however, was apparently voluntary, since when the crime of Ananias is described later, it consists of giving only part of what he owned, but claiming that it was all of it. Peter says that he was free to give it or to keep it; but trying to cheat the Holy Spirit was his sin—and he drops dead on hearing this. But voluntary or not, there was always a strong tendency toward a communistic society (in the sense, of course, of no private ownership) in Christianity, which persists to this day in the Religious orders of the Catholic Church.

During the Renaissance we find Thomas More blaming the plight of the farmers on the land owners, and proposing, in *Utopia*, another ideal society à la Plato, in which no one owned anything, making the people happy and cooperative. This was still thought possible, because it was still thought in his day that you were a person because of the group you belonged to rather than because of your individual existence; hence, sacrifice of your own interests to those of the group was easier to contemplate— and besides, the group (the family or the church or society) was supposed to take care of you; so what did you need private property for?

But times had now changed, and once the individualism of the Renaissance and the breakup of the Christian church had been established in people's minds, it became less and less possible for a

person to consider his identity as established by the group he belonged to; and this led, as I said in the preceding section, to Hobbes's attempt to establish rights on the basis of speculating what a "natural" existence "before" society would be like, and assuming that associations grew out of needs found in this condition.

Locke found fault with Hobbes's idea of a "state of nature" in which everyone was at war with everyone else because there was no natural assignment of objects to definite individuals to be used, and so everyone owned everything. This led, as I said, to absolute power of kings over their subjects, and justified tyranny.

Locke therefore assumed a state of nature in which everyone was independent of everyone else, owning himself and consequently his actions; and this, as I said, was the basis of modern rights theory. Since a person owned himself and his actions, it followed that he also owned whatever he transformed by his actions; and therefore, working on something allowed a person to establish a claim to it, and his work was the title of his right to own it. Thus, if I prune an apple tree, making it more productive, you can now be excluded from eating the fruit of that tree.

The germ of the labor theory of value is in this, because it follows from the fact that I own the tree and its fruit that I can now make you pay if you want to eat it; whereas before anyone worked on it, the fruit of the tree was a free lunch.

So both modern rights theory and modern economics stem from Locke. I tried to show in the preceding section how this wouldn't really work as a basis for rights, though there was a profound insight in it that was true: that we are self-determining. I will try to show later how the labor theory of value that grew out of it doesn't really work either. But at the moment what I am interested in is whether Locke's notion of the basis to the claim to the right to ownership of a given object can be sustained.

It might work as the *initial* assignment of things to people; but unfortunately, its logic works against itself once that has been done. If I have a right to own something *because* I have worked on it, as an extension of my right to myself (since I have, in transforming it, "put" something of myself into it), then it follows that *anyone* who works on something, transforming it according to his idea of what it should be (and thus imposing his own concept upon it, as when an artist makes a block of marble a statue, containing now the shape *he* conceived for it), owns what he works on.

But then that means that no one had better hire anyone to work on anything he owns, because the worker by working on it then owns it, because he has put something of himself into it. Thus, if the stone quarrier didn't sell Michelangelo the block of marble he had carved out of the mountain, but only lent it to him, then the *David* would be his, wouldn't it? Not by this theory. The untransformed block of marble was his; but when he lent it to Michelangelo to practice on, then as soon as Michelangelo set chisel to stone, the block would belong to Michelangelo. Or if Michelangelo had some assistant do the polishing, then the block would now belong to the assistant.

To bring this a little closer to home, if you own a car and can't fix it yourself, and this theory is true, then when it breaks down, sell it or throw it away, because if you take it to a mechanic to fix it for you, it becomes his by the fact that he worked on it.

Actually, it was this difficulty with the Lockean view that was in the background of Marx's rejection of private property altogether. The worker who couldn't own the fruits of his labor was being dehumanized, because someone else owned part of his reality (and so he was "alienated" from himself). But in that case, there was no solution to hiring anyone to work for you—except denying the right to *any* ownership of those things which you could let other people

work on and still keep for yourself.

So the Lockean notion of private ownership is all right as long as everyone stays an absolute individual, and never has anyone help him work on his property. But as soon as he has a helper, he loses his property by the logic by which he gained it in the first place.

Well then, *do* people have a human right to own things, and if so how does a person establish a claim to something, given that nature has put no name-tag on anything?

We don't have to imagine an impossible "state of nature" in which everyone is an adult endowed with dispassionate reason and so able to weigh advantages and disadvantages objectively. I said in the preceding section that you can establish a human right if you can show either (a) that some damage is done to you if you can't do a certain act (in this case own something), or (b) that you can't fulfill some moral obligation you have unless you can do the act. What I will be giving is basically the way the Scholastics establish the right to ownership, which follows these two principles, and is, I think, right on the mark.

First, a definition:

*Ownership* of an object is placing the object in a situation in which a person (the owner) can do what he pleases with the object, and no one else can do anything to or with it except what the owner allows.

Ownership of itself allows absolutely unrestricted control over the object, even to destroying it. If a person may not morally do something to an object he owns, this prohibition is on other grounds than ownership. For example, I could torture my dog insofar as the ownership of my dog is concerned; but I may not do so because this violates my nature as sympathetic. Eventually, I suppose, I will have

to kill my dog, when she grows old and is only in pain; and I have the right to do this, assuming that I have a *right* to own her. If ownership is a right, then clearly it is in some sense an alienable right. I can give up my ownership in things, either by selling them or even by just giving them away. And under certain circumstances, things I own can be taken away from me against my will. For instance, when I originally wrote this, a bank had a lien against the house I own. I own it; but if I were to have defaulted on my mortgage payments, the bank could have taken it away from me. Similarly, the government can take my house by the power of eminent domain, as we will see in a later section.

But is ownership a right?

First of all, we must have the right to own *consumable* items. If I can't own the apple I am about to eat, then I can't morally eat it; because when I eat it I destroy it, and therefore no one else can use it. Hence, if I couldn't own consumable items, I couldn't consume them. But obviously if I can't consume food, I will die. Hence, I must have the right to own at least *some* consumable items.

But since no one can say how many consumable items a given person needs for the preservation of his life and his health, no fixed limit can be put *a priori* on the amount of consumable items a person has the right to own; and so the right to own consumable items is restricted only by the right everyone else has to own what is needed to sustain life and health.

That is, my right to own this apple ceases if (a) I don't need it to stay alive and healthy, and (b) you will die without it. Otherwise, the basis of my right to own it in the first place is contradicted. I will discuss this more at length later.

Actually, nobody really doubts that we have this right to own consumables, because it is so obviously necessary to human existence.

But secondly, we must have the right to *keep* consumable items

that we are not using at the moment. The reason for this is that we can foresee the future and realize that with winter coming, the apples won't be on the tree any more; and if we don't store food, we will starve. It would contradict our reality as able to predict the future if we didn't have the right to do this, because then we would know that (a) it was physically possible for us to take action not to starve, and (b) it was not morally possible for us to do so. And, of course, if we can't keep these things for our exclusive later use, then we can't guarantee that they'll be there when we need them.

Again, since all sorts of things can happen in the future, the amount that a person has a right to keep without using can't be restricted by anything other than the dehumanization of those whose life or health would be in jeopardy because of the unavailability of what is kept from them.

Thirdly, we must have the right to own *non-consumable* items (property) such as housing and land. Here's where things really begin to get controversial. But food, water, and clothing are not the only necessities of life; there is also shelter, which is not used up (consumed) as it is used. If we could not own some item that we could take shelter in, we might find it occupied when we needed to take shelter in it, and would die of exposure. Further, if we could not keep it and keep others from sheltering in it when we didn't happen to be inside it ourselves, then we might not be able to use it in the future when we needed it. Hence, we have the right to own such things. We also have the right to assure ourselves of a steady supply of food; and if others trample over the crops we grow because we can't keep them off our land, the crops won't produce.

Further, since people marry and have children, for which they have an obligation to provide food, clothing, and shelter, then they have the implied right to see to their future needs also; and this

includes seeing to their needs even in the case of incapacity or death of the provider. Hence, the right to own non-consumable items includes the right to *pass on* the ownership to one's dependents, who then have the *right to inheritance*.

That is, I have an obligation to see to it that my children are not harmed. I can't count on the fact that I will be there to defend them against harm (or that I will be healthy enough to defend them) unless I can own something which they can use upon my incapacity or death. I can't just "trust that God" or Uncle Sam "will provide," if I have made the deliberate choice to bring them into the world. So, just as I have the right to own things based on my own future, I also have the right to pass on the ownership to my dependents upon my death.

Once again, how much I have the right to own or to pass on to others is in itself unrestricted, and only is limited by the potential dehumanization of those who are deprived of necessities because of what I keep for myself.

Therefore,

# Conclusion 3: A person has the human right to own, not only consumable items, but stable property, which he has the right to pass on to his dependents.

The "dependents" here cannot necessarily be specified as members of the immediate family, since one can join into relationships (by adoption, for instance, or promising to take care of one's sister's son, or even because someone else lives with one and has become dependent. Hence, the right to pass on what is owned is not of itself restricted by nature. Thus, one can decide on which people will inherit his property, and in what amounts—as long, as I have been saying—as no one is harmed by this distribution.

Since the right to ownership is a human right, then based on what I said about alienable and inalienable rights in the preceding chapter, it follows that it is at least relatively inalienable. Clearly, it is not absolutely inalienable, because if I don't want to own anything and can join a group which will take care of my future needs, then I can fulfill the obligations which imply the right of ownership. Thus, there was nothing *morally wrong* with the early Christians' (or present-day members of Religious Orders') voluntarily giving upthe right to own anything at all, and even being assigned consumable items to use up. The point of the relative inalienability is that civil society can't *take away* this right, as Communism does. Communism, since it denies people the right to own what they have a human right to own, is a morally wrong system of government, even if it supplies all their needs. We will see why a welfare state is dehumanizing in the section on civil society.

But I said earlier that things like liens and eminent domain showed that the right was alienable, because what you own *can* be taken away from you against your will. You will note, if you go back and reread that passage, that I said it was "in some sense" alienable. The solution is that the *general right to own things* is relatively inalienable; but *the right to own this or that specific thing is alienable*. That is, no society can demand that I own nothing at all (or no stable property at all); but the City of Cincinnati could take my house away from me if it needed the land for a legitimate city project (it would have to pay me just compensation for my loss, of course).

But this brings up the question of how I get the right to own a given individual thing. Obviously, most of us get to own things by being given them or purchasing them from people who already own them; and there is no problem here. The problem comes in trying to figure out how the initial ownership of things gets assigned.

Of course, from the fact that we have a right to own things and

the fact that things are not persons,<sup>23</sup> it follows only that they *can* legitimately be owned by us, not that there is some naturally built-in distribution scheme that says which object belongs to whom. The point here is that there is no obstacle to ownership on the part of the things owned, except the conundrum of how the ownership is assigned.

Obviously, Locke's scheme won't work. Since ownership is supposed to give you control over what you own, basing ownership on working on the object would preclude the kind of control by which you had someone help you work your farm, for instance; because then you would lose ownership of the part he worked on.

But an interesting conclusion follows from this.

Conclusion 4: A person does not have an automatic right to the fruits of his labor. If he is working on something that someone else already owns, the results of his work are not owned by him.

Marx would deny this, of course. But if you look at what is behind Marx's economic analysis, you find that what distinguishes human beings from other sorts of animals is, in his view, the transformation of inanimate objects into something useful for humans, or what he means by "labor." Thus, the essence of humanity for him is labor, in the sense of actually doing something

<sup>&</sup>lt;sup>23</sup>If it should turn out that dolphins can actually speak or understand language and not simply react in complex ways to it, then it also follows that they are persons, and therefore no one can own them or keep them penned up and so on.

to material objects.<sup>24</sup> Clearly, on this view, if someone else owns the fruits of my labor, then *he* owns what is essential to *me* as human; my humanity as such is, as it were, in the objects that someone else owns. Obviously, with this view of humanity, it would be immoral for anyone to own the fruits of another's labor, and so a person would have an inalienable right to the fruits of his own labor. The fact, of course, that Marx deduced Communism from this makes an interesting dialectical paradox; it is because no one is to own the fruits of my labor that all ownership is taken away from me. His Hegelian "synthesis" of this is that if everyone (the society as such) owns the fruits of my labor, then no one (i.e. no individual) does. Thus, society can give to each "according to his needs" and not according to what he has done; because by the dialectic, the Lockean foundation of independent individualism has generated absolute totalitarianism.

My reaction to this is that if I have a right, I have a right; and so if I have a right to the fruits of my labor because it's the essence of my humanity, the state is dehumanizing me by taking these fruits away—because even if the state includes (as Marx wants) all human beings, it is only all the human beings that happen to exist at the moment; and this will change in five minutes as people are born and die; and so it is not really "humanity as such" concretized, but a finite collection of human beings—and the only grounds on which it is, for Marx, not immoral to have someone else own what I do is if I am working for humanity as such (because then my humanity is alienated into "humanity," or is not alienated). Baloney. In fact, only

<sup>&</sup>lt;sup>24</sup>In this connection, I am amused by all the Marxists there are in universities, both students and professors, who are drones in Marx's view, living off the labor of others and doing nothing productive themselves, all the while they denounce the capitalists as unproductive drones.

a few people will use what I have produced; and so I am in practice working for them, not everyone.

But on any other notion of humanity, then if someone asks you to help him fix his car, you don't automatically own the car just because you worked on it. You have a right to *compensation for your service*, as we will see; but this is not the same as the right to *own what you work on*, which is what owning "the fruits of your labor" means.

But this still doesn't solve the problem of how we assign initial ownership. Actually, the solution is simplicity itself, and has been practiced ever since there have been people:

# Conclusion 5: A person acquires ownership of what has not been previously owned simply by asserting a formal claim to it.

A "formal" claim is a statement that is recognizable by others as asserting the right to own the object in question; it doesn't necessarily imply any elaborate procedure, though in complex societies government can establish what sorts of statements constitute formal claims and what ones don't.

But what happens in claiming ownership is basically this: A person comes upon something that apparently no one owns. He makes enquiries to assure than no one has a prior claim on it, and them announces that from this time on, the object is his. That's it.

I myself did this some dozen years ago, when a stray dog came up on our back porch pleading for food. I asked around to see if anyone owned it, and when no one came forward, I claimed it and tied it up, and it became mine; and it is at the moment I was originally writing this lying down contentedly in my back yard, with a license tag on its collar establishing that the City of Cincinnati officially recognizes the dog as mine.

No big rigmarole is necessary, because there's nothing in the objects of the world that would *prevent* their being owned by any person; and hence I don't have to do anything to tear them loose from "nature" and make them belong to me. The only problem I have is seeing to it that no other *person* uses them as if they weren't mine—and all I need do to establish this is announce in a fashion others can understand that this object is henceforward mine, and you all keep hands off. No more than this is *necessary*, because others now understand the object to be out of bounds for them, based on the general right each person has to own things; and no more than this is *possible*, really, because any further action, such as working on the object, makes the right of ownership contradict itself in some important aspects of itself.

But in this case, what is to prevent a person from saying, "I hereby lay claim to everything that has not been previously claimed by anyone else"? Wouldn't that make him the owner of everything in the world except what was previously owned?

No, because we are talking, not about the right to ownership in general, but to the assignment of specific objects to specific persons. Hence, the first restriction on claiming to own something is that *you must be able to specify just what it is that you are laying claim to*. If you are claiming some land, for instance, you must know where the limits are of the land you are claiming, so that others will know what parts of the world they must keep from entering. You don't have to know every detail about what you are claiming; but you have to know enough about it to know what it is you are claiming, or you aren't really laying claim to a specific object, but to an abstraction.

The second restriction is that *what you lay claim to must be ownable;* that is, it must be such that you can, at least in principle, use

it exclusively, keeping others from using it.<sup>25</sup> If you're going to claim a right to something, then it must be in principle possible to defend the right; and so it must in principle be possible for you to keep others from using the object. For instance, you can't lay claim to a certain amount of air, such as the air in a sphere of radius fifteen feet from your mouth (unless the sphere has physical existence enclosing this space), and then try to sue people who are breathing "your" air.<sup>26</sup>

Thirdly, the claim is invalid if ownership of what is claimed would dehumanize someone else. I gave the meaning of "dehumanize" when dealing with essential acts and necessities in Chapter 3 of Section 7 of the fourth part, where I said that it was forcing a person into doing less than could be expected from his genetic potential: doing damage to him, in other words.

Let us examine this a bit. It implies that a person *loses his right* to own whatever part of what he has claimed that dehumanizes someone else. I kept mentioning this when I was talking about the basis of the right to ownership in general. If you could own something in such a way that your appropriating to yourself this object dehumanized someone else, then your act of "owning" it

<sup>&</sup>lt;sup>25</sup>What I mean here is that you may not be able in practice to keep others from using it, because you're not strong enough and there's no police force to help you. But *if you could*, it would not be immoral to fight others who tried to use it against your will.

<sup>&</sup>lt;sup>26</sup>The right of people (generally as organized) to own the "air space" above their land does exist, however, because (a) it can be defined by the imaginary cylinder extending upward from the boundaries of the land below (and these boundaries can be seen, at least in principle, by people above them), and (b) it can be defended by anti-aircraft weapons and so on. Interestingly, the *space*, which in itself is nothing, can be owned; but the air in it can't be, because the imaginary boundaries do not actually enclose and so define the particular patch of air that is claimed.

would undercut the basis of your own right to own it (which is that if you couldn't own things, you would be dehumanized).

But the whole thing is quite complicated, so let us approach it gingerly, by way of a thought-experiment. Suppose you and someone else are stranded on a small island. You, being astute, say as you set foot on shore, "I claim this island and what is on it as mine."

But your claim deprives the other person of the opportunity to get food, shelter, and clothing, unless he serves you to get it; but this makes him your slave, since he has to serve you to survive; and hence, your claim to everything on the island dehumanizes the other person. He therefore has a claim *against you* for the necessities of life; and so you don't have the right to all the property on the island just because you thought of claiming it first.

So you have to divide the resources on the island. Do you have to divide them equally? No. You did think of making the claim first, and your having more than he has does not dehumanize him, because, as we saw in the preceding section, no one has a right to be treated as an equal to another person. So all you have a *moral obligation* to give up *enough* of what you originally claimed *so that he can live a minimally human life*. As a practical matter, you also have to come to an agreement with him as to how much and exactly what he gets, so that he will recognize your claim and you won't be at war with each other. In principle, of course, you don't have to do this, since he has an obligation to recognize your claim, as long as he is not positively dehumanized by it. Let us say, however, that you agree to divide the island as two thirds yours and one third his, because you convince him that your getting the idea first gives you a right to a bigger chunk of it than he should have.

But the next day, another person is shipwrecked on the same island. Now what happens? Obviously, he can't live unless he is able to use some of the island's resources; and so if both of you hang on

to all you owned, he will die. Therefore, *each of you loses the right* to that amount of your property without which the third party will be dehumanized. And since the total property is divided two thirds/one third, then you lose the right to two thirds of the total necessary to prevent his dehumanization, and the other owner loses the right to one third of that total.

Hence, if you give him half of what is needed to sustain his life, you are in effect killing him; because if the other person gives all of his share, the newcomer will still die. But more importantly, *based on the reason why we can own property in the first place, the amount you have kept back is not really yours*, because it contradicts that basis.

## Conclusion 6: The right of ownership is not absolute.

But suppose you give your share, and the other person doesn't. Can you just let the newcomer die? Not if giving him enough to sustain him won't dehumanize you. But the reason *now* why you have to help him out is not based on rights, but upon the *relation of interdependence* we have with other people. Since in fact we have to cooperate to survive, as I said (and am going to discuss in the section on society), then you can't claim now that you have nothing to do with him just because you have given up what he had a strict right to have from you. You now must help him either see to it that the other owner gives up what he has lost the right to, or give some of what the newcomer has no strict right to have *from you*, because otherwise you are in effect killing him by watching him die when you could prevent it without damage to yourself.

Notice that your obligation stops (a) at the point at which giving something to the newcomer dehumanizes you, and (b) at the point at which the newcomer is no longer dehumanized: that he has the necessities for survival. Your not giving him any more, even if you

have great wealth and he is living at a very low level of humanity, *does not do him any damage*, as long as he *is* living a minimally human existence. We have no right to be treated equally with others. This is important enough to make a formal conclusion out of it.

Conclusion 7: Great disparities in possessions are not morally wrong, as long as the one with less is not actually being forced into an inhuman existence.

Thus, there is nothing wrong in our society with J. Paul Getty having billions of dollars, while Johnny Ghetto has to make do with K-Mart jogging shoes instead of the latest Nikes that you can pump up to fit your feet and a low-priced boom box instead of a stereo that can blast the sides out of his house. Johnny with his boom box is doing more than just barely surviving; and so we can say that, however (relatively speaking) low his level of living is, it is a human existence, even with some freedom to maneuver (he could have bought a better pair of jogging shoes for the price of the stereo, for instance).

Thus, those people who are trying to redistribute the wealth in society are basing what they are doing on a false premise: that the distribution of this world's resources ought to be equal. But there is no basis for this except the equally false idea that we are all "really" equal.

Now all of this might be clear when we are talking about three people stranded on an island, but in the world most of us live in, how is it applied? That is, when the number of owners is very large, and for practical purposes everything is already owned, and when there are a certain number of people who have no chance to live a human life because they can't get hold of the necessities of life, then it's not immediately obvious (a) how much *in toto* is needed by the needy,

(b) how much *each* needy person needs in order to raise him up to a human existence, (c) how much superfluity a given owner has in relation to someone else, (d) how much hardship (if any) it would cause the owners to supply their share of what they own to the needy, and finally (e), which needy person has a claim upon how much of which affluent person's superfluity.

We have to suppose in this discussion that the needy people in question can't (by working, say) provide for their own needs. That's the ordinary way it's done, and if, as St. Paul says, "a person is not willing to work, he is not to be fed." In that case, the person could support himself, and he *chooses* not to; and so now his neediness is his own responsibility, not anyone else's. Here, the supposition is that the person is physically capable of working, and work sufficient to supply the minimum of human existence is available. The people I will be talking about are those who are incapable of supplying by their own efforts what they need to avoid being dehumanized.

Supposing, then, there to be a class of needy people according to this definition, the needy really have a claim against *all* of the affluent *collectively*, rather than against definite individuals (except in special cases, like the claims of children against parents); because it is the fact that everything is already claimed that is depriving them of the ability to live a minimally human existence. That is, it isn't the fact that George Blair owns a house in Cincinnati that is depriving Ahmed Ali in Afghanistan of the ability to eke out even a bare living; it is the fact that George Blair is just one of the multitude who have by their ownership made it impossible.<sup>27</sup> So he has no particular claim against me. But by the same token, *all* the needy have a claim to part of my superfluity; because what is true of Ahmed is true of each other

<sup>&</sup>lt;sup>27</sup>Supposing this to be the case, and that it isn't the policy of the Afghan governments, for instance, that is responsible.

person; it is the fact that I and the others like me own everything that each of them can't live a human life.

But this puts us into the dilemma that I don't have any obligation to give anything of what I own to any definite person, because no one has a claim on me as an individual; and I can't give it to all of the needy, or I would go broke and become needy myself, and each of them would get a millionth of a cent, which would be of no practical use to them. That is, to the extent Ahmed has a claim against me, it is only to about a millionth of a cent, which I couldn't give him, and he couldn't use if I did.

Notice, by the way, that my obligation to the needy is *not* discharged if I "give my excess to charity." Suppose I find a number of poor people, and divide up among them half of what I own. But is half of what I own the amount of my property that is not rightfully mine on the grounds that it is dehumanizing the needy? Or is it only a fiftieth (supposing everyone else gave his share), or as much as two thirds, or what? In the second place, what about all the people I didn't give anything to? Didn't they have just as much a claim against my superfluity as these ten paupers I happened to pick out? Thirdly, the people I did pick out have no claim against *me personally* for what I gave them; and so even if they had a *right* not to be in effect forced into an inhuman existence, *my* raising them out of it was an act of *generosity* to them, since they didn't have the right *against me*.

Thus, the ones who receive the alms are put in the invidious position of having to be grateful to me for (a) doing what I had an obligation to do anyway—but not to them—and (b) receiving what they had a right to receive—but not from me. And *this* is supposed to be the "most human" way of relieving the poverty of the poor?

# Conclusion 8: When the number of owners and of those -

dehumanized by lack of possessions becomes very large, it is impossible in practice for individual owners to discharge their obligation toward the needy.

That is, it becomes impossible for them to know what their obligation is (how much they don't rightfully own) and how to distribute their superfluity to the needy without forcing some of the needy to remain hungry and the others to have to kowtow in gratitude for receiving what they have a right to receive.

But then what is to be done? We can't let the needy just starve.

The answer is that *civil society*, whose function, as we will see, is to see to it that none of its members are treated unjustly, and can demand cooperation to this end because of the relation of interdependence, must take upon itself this task. It must (a) find out who are the needy and how much each needs to live a minimally human existence, (b) find out who are the affluent and how much each has above the level of neediness, and (c) levy an assessment on each of the affluent and distribute the total acquired to the needy according to their needs, using the Principle of Least Social Harm, that the sacrifice of those who are making the contribution is to be in real terms as small as possible, consistent with getting the job done.

No easy task, this; and in many respects it will fail. But since it is the only way the problem can be solved so that injustice is not automatically done, it is what must be done, and done as carefully as humanly possible.<sup>28</sup> When the needy receive what prevents them

<sup>&</sup>lt;sup>28</sup>In this "care," government must be wary that giving to the needy does not create an incentive not to work on the part of those who are merely almost needy, thus creating a class of "needy" people who really aren't needy, which is unjust to the affluent as well as being dehumanizing to these "needy" people, who don't develop

### Section 2: Economics

from being dehumanized from *society*, they don't have to be grateful to government, because this is what government's job is; and so it isn't "charity." When the affluent give up what government demands of them, they have no right to complain, because that's what being in civil society entails. We will discuss this a bit more at length in the section on society. But even with what I just said, we can draw the following conclusion:

Conclusion 9: On the assumption that government is trying to see to it that the needy are not dehumanized, then when an affluent person has paid his taxes, he has discharged his moral obligation to the needy.

The affluent person *can*, of course, give more than just what the government assesses; the point is that he can take the government's assessment as the amount of his property that he has no right to because it is depriving others of a human existence; and anything over and above this is generosity on his part.

There are, however, people who will "fall through the cracks" and for one reason or another not get the benefits from society's distribution to the needy. If an affluent person happens to know of such people, then he will have to do something to help them out to the extent that not doing so would be the equivalent of keeping them in a dehumanized condition. How much he has to do is, of course, up to each person's conscience.

So, paradoxically, given the fact that not everyone will in practice be relieved of his dehumanization by what government does, the affluent person "has to" do somewhat more than he "has to" do. He doesn't "have to" give this extra, on the grounds that he can say he

themselves, but rely only on handouts for a meager existence.

# Part Six: Modes of Interaction

has already given his share; but he is like the man on the desert island who has given his share and found that the other person didn't contribute his; there is this other obligation now based on our interdependence that doesn't allow him to just stand there and let the indigent die. But, having given more than he is assessed by taxation, he need not answer every appeal to him (indeed, based on the letters I receive, if he did, he'd cease to be affluent in short order); he can say, "I've given more than my share; let the other affluent people do the rest."

It is not immoral, therefore, to enjoy your wealth while there are in fact other people that are starving, unless they are starving precisely because *you* are forcing them into it, any more than a doctor has an obligation to minister to all of the sick people in his area, as long as there are other doctors around. Each person has a right to a decent life, and you don't have to knock yourself out as if you were actually responsible for others' misery just because you are happy; *you are responsible for some of it; but you have discharged that responsibility*, and so you need not feel guilty for the rest.

We cannot eliminate evil in the world, remember; because evil as such does not exist; it is just that some people are more limited than others, and therefore some will be more limited than the lowest limit at which the norm is set. The point is that we must not connive in the dehumanization of other people; but a person who has paid his taxes (which after all in the United States of my day means that I work from January to May for the government and only from May to December for myself) can say that he is not conniving in anyone's dehumanization. And this is all that morality requires.

At the time I write this, there is no international society which can evaluate the poverty of those in poor countries and the relative inability of the countries themselves to take care of it, and can therefore assess how much the affluent countries need to contribute

to the poor ones and distribute the collection to the poor countries in such a way that the poor in them actually get it (and it doesn't go for extra military equipment or elaborate government buildings).

In this case, the poor in the poor countries are still right in a sense when they say that they are being "exploited" by the rich ones. The fact that the rich countries have more wealth than they can use and the fact that countries nowadays are in fact interdependent means that *some* of the wealth of the rich countries is forcing the poor into indigence.

It's not as simple as this, however. We are inclined to see wealth and poverty as a zero-sum game, where there is a fixed amount of wealth in the world (i.e., of valuable objects), and it is unevenly distributed. But in point of fact, a given object is valuable based on whether it leads to a person's goals or not; and bauxite, for instance, is useless to just about everyone but an aluminum manufacturer; but aluminum is valuable to many people. Similarly, owning a pile of sand is not owning much; but owning a pile of silicon computer chips is owning a fortune. So it isn't the *raw materials* that are wealth; it is much more the finished products: the transformed raw materials.

Wealth, therefore, gets created, and the amount of wealth in the world grows as more people transform more things into objects people want to use to pursue their goals. Poor nations like Korea suddenly become affluent, not by massive doses of aid from wealthy nations, but by producing things that other people want to buy. A certain amount of gift-giving is needed to enable the people to do this; but it is the people of the nation themselves who basically create the wealth of the nation.

This is analogous to the people who refuse to work. A nation that rests on "we are poor and therefore we deserve to be given some of the excess of the rich countries," *and* which does for practical

purposes nothing to provide for other countries things that they want and will pay for, is a nation that does not deserve foreign aid from the rich countries. This is a hard saying, because many of the citizens would work if they could get it; it is the nation's structure that is hindering them—as in North Korea, for instance.

In any case, it can be that the poorer nations do need financial help from the wealthier ones; but as things now stand, a given poor nation has no right against a given rich nation for a given amount of wealth; and so when the rich nation gives money to the poor one, this *is* generosity on its part, which then puts the poor nation in the same position as the poor individual receiving "private charity" from the rich person: he is expected to be grateful for something he has a right to receive, but which he has no right to receive from the one who gave it to him.

As I write, there is no solution for this. I would guess that the proper solution would be for an international society of nations with power of assessment and distribution would have to be formed to accomplish it. But it would have to be run by people greater than Solon, because it is exceedingly difficult to say in practice even whether the poor nations need aid, and what aid they do need.<sup>29</sup> As we will see later, it does not follow that a person who can get a living for himself by working and refuses to work has a right to be kept

<sup>&</sup>lt;sup>29</sup>Not to mention that the people in it would have to be saints, handling all this money and resisting the temptation to siphon it off for themselves. As I write this now (2004), there is a scandal in the United Nations, which was getting kickbacks from Saddam Hussein for allowing him to divert funds from the "oil for peace" program to his own purposes. There is also the human failing of letting one's political prejudices tempt one to punish the rich for being too rich while others are barely making it. There is nothing wrong in itself with disparity of wealth, as long as the poor are not positively dehumanized. As you can see, an international organization with this job would not in practice work, and would probably wind up with the last state worse than the first.

from starving by handouts from anyone. In this connection St. Paul's superficially cruel statement to the Thessalonians is perfectly accurate: "We told you that if a person did not want to work, he was not to be fed." Similarly, if a nation insists on squandering its resources, it doesn't have to be given extra money to throw away just because there are poor people in it. That's a hard saying, but it's true nonetheless.

One remark about redistribution of the wealth before I approach the subject of transactions. I mentioned before that redistribution was based on the false assumption that because we are equal, we should have equal shares of the pie. That's one thing wrong with the redistributive theory of taxation. The second thing wrong with it is that, as we will see, government exists to protect the *rights* of the citizens; but if you give more to the poor than they *need* to avoid dehumanization, you are giving them more than they have a *right* to have—and in order to do this, you are *taking* more from the wealthy than they have to contribute in order for the rights of the poor not to be violated; so that in practice they are being forced to contribute more than they have to, which violates *their* rights. Yes, the wealthy have rights too.

The third thing wrong with it is it won't work. Wealth is power, and the wealthy, being powerful, have ways of seeing to it that what you do to take money away from them is not going to work. At the moment, the Congress is debating raising the tax rate of the very wealthy.<sup>30</sup> What will that do? Since the wealthy get their income by investing money, it will induce them to invest it in "tax shelters," such as, for instance, tax free government bonds; so that the government winds up paying *them* money (the interest on its debt) instead of taking money from them.

<sup>&</sup>lt;sup>30</sup>At what moment is it *not* debating this?

# Part Six: Modes of Interaction

The fourth thing wrong with resdistributionist tax policies is that, to the extent that siphoning off the money from the rich is successful, the rich are not now investing that money in productive enterprise (which *creates new* wealth), but simply handing it over to the poor (or, as in our country, to the bureaucrats who are allegedly taking care of the poor); and the country becomes poorer, not wealthier. In the limit, as has been demonstrated in Communist countries, abject poverty gets evenly distributed to everyone but those in government.

So taxing to redistribute the wealth is theoretically unsound and practically unworkable. But it sounds nice, and that's why it's got such a good press.

### Chapter 4

### Transactions

A s a propaedeutic to this section, I would advise rereading Section 7 of the fourth part. Briefly, a value is some aspect of an object that allows you to pursue a goal that you have freely chosen; and one object is more valuable than another insofar as the goal it leads to is more important than the other. A necessity is some aspect of a thing without which a person is dehumanized because it forces him to lack an essential act; and one object is more necessary than another insofar as the lack of its corresponding essential act is more dehumanizing than the other.

Let us first consider the simple transaction of a swap of one object for another.

Here, there are four values or necessities involved. Each person sees the value of what he is giving up and the value of what he is receiving in exchange. For instance, if I swap my apple for your orange, what is the situation? Let us say that I don't like apples, and so my apple's value for me is nil; but the value of the orange is three pears (because I do like pears a little, and if I had any I would give three pears to get your orange; but I wouldn't give four). You also, as it happens, like pears, and you would give up two pears to get my apple (so its value for you in relation to pears is two pears), while you

would only give up one pear to get an orange (so its value in pears is one pear).

I am using pears just so that both of us can compare apples and oranges, of course. The first point to note, however, is connected with this: As I said in Chapters 2 and 3 of Section 7 of the fourth part, *there is no real value for either the apple, the orange, or the pear;* the value of each depends purely and simply on to what extent each object contributes toward goals we have freely set for ourselves.

Now then, when we make the swap, I gain what is for me the equivalent of three pears *and give up nothing*, because the apple had *no* value to me at all; and you gain the equivalent of one pear, because you got something that you'd give two pears for and gave up something that you'd give one pear for.

Does this make the swap uneven? No. There is no such thing, really, as an "even swap," because neither person would swap one thing for another if he didn't want the other thing more than the one he was giving up; hence *for each of us*, the swap is *uneven to our advantage*.

That is, we both gain by it. It isn't that one gains and one loses; this would only happen if the apple and the orange were somehow possessed of a real value, but the two were not equal. If things have a "true" value, then either the swap is even, in which case it won't take place, or it isn't, in which case one person loses, and so the swap won't take place. Either that, or one of the two is ignorant about the real value of what he is swapping. But there's no such thing as the real value of anything.

There's the children's story of the foolish boy who was taking his mother's cow to market, and on the way exchanged it for a pig, and exchanged the pig for something else and so on and so on, until all he finally had, as I recall, was a lump of butter. The moral was supposed to be that he was stupid and didn't realize the true value of

what he had; yet he became happier at each exchange, because he had got rid of something that was burdensome and replaced it with something he wanted more. He was a fool *only* on the supposition that there was a market that he could have taken the cow to and located someone who was willing to pay him enough money for it that he could buy all of the other things he wanted. Absent the market, what was the problem?

It's really hard to get out of our heads that the market price expresses the "true" value of something; but as I said in the Six Great Myths, this is as much a fairy tale as the tale of the boy going to market. The *relative value*<sup>31</sup> of something is solely *how important the goal it leads to is*, and that is *subjective*, and has no objective basis at all.

The market just adds the complication that someone else might give you something that you find still more valuable in exchange for what you are giving up; and so if you want to maximize the unevenness of the swap, you will shop around and see if you can find someone who has what you want more and values it less than the object you are willing to give to him. But this doesn't make the value itself objective at all, nor does it make the swap anything but uneven in each party's favor.<sup>32</sup>

But it does tell us something interesting about swapping. Since there is no objective value to anything, then you *can* shop around until you find someone who is willing to give up something you value much more for what you have to offer him. You might find

<sup>&</sup>lt;sup>31</sup>That is, its value in comparison with something else of value to a given person.

<sup>&</sup>lt;sup>32</sup>But it *does* show the foolishness of the boy taking the cow to market, because if he liked butter so much more than the cow, there are other people who would give him a great deal of butter for his cow.

#### Part Six: Modes of Interaction

someone who would give you a whole dozen apples for your orange, and instead of getting one apple, you get twelve—and each of you still gains, because your swapping partner has now got something that's worth more to him than twelve apples, and you have something that's worth more to you than an orange.

Conclusion 10: If necessities are not involved, there is nothing morally wrong for each party in a transaction to try to gain as much for himself as possible, looking to what he thinks is the upper limit of the value the other party sets on the object he is exchanging.

You cannot cheat someone when values are all that is involved. I mentioned in Chapter 2 of Section 7 of the fourth part that the Europeans were not cheating the Indians in buying Manhattan Island for some beads, because in fact the Indians valued the beads more than that piece of land (because they had the whole rest of the continent to roam around in, and they didn't really own it anyway). Undoubtedly, they thought that they were cheating the settlers, and acting more or less like the man who sells the Brooklyn Bridge to the immigrant. The only way you can cheat in a transaction between people involving values is to swap something that isn't what it appears to be (like a radio that doesn't work, for instance).

If, on the other hand, one of the objects swapped is a necessity, the situation changes. Suppose I am sick with scurvy, and the only thing that will keep me from dying is an orange. I not only have the apple, but enough beef in my freezer to last for the next four years, and you happen to know that. You tell me that you don't want the apple, but you'll swap your orange for a three years' supply of beef.

What I would do first is refuse and see if I could find an orange somewhere else; but if I couldn't, then I'd come back and try to

make you lower your demand. But if you held out, and particularly if you told me that if I didn't hurry up and agree, you'd find another taker for your orange, I would make the swap.

Why? Because you are handing over to me what is for you a value (the orange), and so you can keep it or give it up as you please, and exchange it for anything you want. I, on the other hand *may not morally refuse to acquire it* if it is possible for me to do so. If I say, "But I was counting on that meat to get me through the next four years," you could easily reply, "What's the next four years to you if you're dead from scurvy by December? You can always get more meat if you're still alive."

You are acting as if I *value* my cure of scurvy higher than my supply of meat. But I don't. I *need* the orange *to avoid harm* and I *value* the meat *to achieve my goals.*<sup>33</sup> When necessities are involved, there are no longer four values in the transaction, but only three: the value of the orange to you, the value of the meat to you, and the value of the meat to me. The "value" of the orange to me is infinite, and cannot be compared with any of the other values in the transaction. Hence, if you had wanted all four years' supply of my beef (instead of, in your mercy, leaving me with some), I would also have made the swap, unless the lack of any beef would have been as deadly as the scurvy you had the cure of.

When the exchange involves a necessity, then, the "upper limit" of what the person will give in exchange for it is *the point of greater dehumanization*. In fact, in any exchange involving a necessity, the one seeking the necessity never gains from the exchange. In the best case, he swaps something of no value to himself at all, and removes the dehumanization—in which case, he is now at zero. He didn't

<sup>&</sup>lt;sup>33</sup>Always supposing that I have enough other food so that the lack of meat will also make me sick.

gain from removing the dehumanization, because he is no better off than he has a right to expect to be as human. If, of course, he swaps something of no value to himself and only *lessens* the dehumanization, he is a net loser afterwards; it is just that he is less of a loser than he would have been without the transaction. Finally, if he swaps something that has a value to him for the necessity, then he *loses* whatever goal he can't now attain because of the giving up of the value, and gains nothing from the transaction, because at best he has simply removed the dehumanization due to the lack of the necessity.

Beware of the pseudo-mathematical mentality that considers reduction of a loss a gain. As I have stressed so often, calculating greater and lesser dehumanization is an *entirely different process* from calculating greater and lesser gain toward one's goals. We have a *right* not to lack necessities, because lacking them pushes us below the ability to act up to our genetic potential, and as humans we have this genetic potential, which is a power to act; and so lack of a necessity contradicts our nature as human; and as human we have a right not to be a living contradiction. So the person who "gains" a necessity gains nothing at all; he simply now has what he has a right to presuppose that he should have.

From the point of view of the one who lacks the necessity, the one who exchanges it for something of value is *threatening him with harm* if he does *not* give up the value for the necessity. It is not a question, for him, of how much better off he will be with the necessity, but how much worse off he will be without it; while the person who is exchanging it as a value is looking to see how much better off he will be for having the value he is exchanging this other value for. He can freely give up the value to get the greater value; the

one with the necessity *must* give up any and all values<sup>34</sup> to get the necessity.

## Conclusion 11: Exchanges involving necessities are always to the disadvantage of the one who receives the necessity.

How do we solve this dilemma? The noble way to solve it, of course, is simply to *give* the person the necessity he lacks, not to exchange it for something. In certain cases, this might even be morally obligatory. If the only thing the other person has to exchange for the necessity is a lesser necessity, then forcing him to make the exchange is to dehumanize him.

On the other hand, for the person who doesn't lack the necessity, what he is swapping *is* a value for him; and so if he gives it up to the person for whom it is a necessity, then he loses. No *damage* has been done to him, of course, because the object is a value for him, and if he were damaged by giving it up (i.e. dehumanized), it would by definition be a necessity for him. It is just that he can't achieve some goal he has set for himself, and so must at least temporarily give up that goal.

So he loses if he gives up the value and gets no return, even if he doesn't do himself harm. But since people are self-determining, it is legitimate not to have to engage in transactions where you lose. Hence, the person who is exchanging a value (which happens to be a necessity for the other person) has a right to exchange it for something of *equal* value to him, so that he doesn't lose by the transaction. But if he exchanges it for something of *greater* value to himself, then he is in effect forcing the other person to subsidize his

<sup>&</sup>lt;sup>34</sup>Again, supposing that the lack of a great many values does not amount to a dehumanizing deprivation that is greater than the deprivation he is getting out of.

gain by the other's being less dehumanized than he was—or he is threatening the other with greater dehumanization unless the other person makes him richer.

That is, the one exchanging the necessity for a value that makes him a net gainer is doing in effect the same thing as a robber who threatens you with death unless you hand over your wallet. All that is, when you look at it, is a transaction where a necessity (not being killed) is exchanged for a value (whatever is in the wallet). The only difference is that the person threatened by the robber is not now dehumanized, and becomes dehumanized if he decides not to make the swap, whereas the person lacking the necessity is already dehumanized, or at least is not going to be *directly* dehumanized by the action of the swapper. I am thinking of exchanging a gallon of water with someone in the desert who isn't thirsty right now but knows he'll die without it tomorrow. The fact that you won't directly kill him by not giving him the water really makes very little difference; the fact is that without it, he'll be dead; and so you're threatening him with death unless he agrees to the exchange on your terms. Thus, if you ask for more than what makes up for your loss, you are robbing him.

I'm sorry about that, but I don't see how you can escape the logic of it. We have been so brainwashed by our capitalist way of thinking about transactions that we believe that *any* exchange that is "freely entered into" is an exchange where both gain, or they wouldn't make the exchange. Of course, those who hold this don't think that handing over your wallet to a robber is an exchange freely entered into. But why? After all, he says, "Your money or your life," and gives you a choice, and you *freely* choose to hand over your wallet in exchange for your life—and so by the logic of capitalism, you gain. "But he was threatening to *do* you harm if you didn't hand it over!"

alive *isn't* threatening to do you arm if you don't hand over your wallet? Ask the one who needs the water. You can actively harm someone by inaction as well as by action.

Don't get me wrong; I have nothing against capitalism as such. What I am saying is that a capitalism that doesn't recognize that necessities are essentially different from values and which treats transactions involving necessities as if they were the same as transactions involving nothing but values is a capitalism gone blind, which only sees threats on the most superficial level, and so treats cases of robbery as if they were benefactions.

# Conclusion 12: A person who is exchanging a necessity for a value has a right to recover the value of what he is giving up, but no more than this.

You will say, "Then why would the exchange take place? The person who is exchanging the necessity is not gaining by it, and so there's no motive to induce him to make the transaction." This is true, *if* the only motive that a person can have is his own gain (or reduction of his own dehumanization).

But there is the fact that we are all human beings, and we have a moral obligation not to connive in the dehumanization of other human beings. This is what is behind Jesus' statement, "I was hungry and you didn't feed me; I was thirsty and you gave me nothing to drink," when he tells the cursed to depart from him. And the people say, "Master, when did we see you hungry and not feed you?" and he answers, "When you refused to do it to the most insignificant of my brothers and sisters, you refused me."

Do you honestly think that if you are in the desert and you own a well and someone comes up to you and asks for water, you should hold out before you give it to him until he offers you something in

exchange that will increase your wealth? If you have any human decency in you at all, you will give him the water even if you lose by it, as long as you're not actively doing yourself harm—because you recognize that if you don't, you are in effect killing him.

Here is the first place, then, where good morals turn out to be good economics too. To give the man his water, or to exchange it for something where you just recover your losses *is consistent with the economic realities* of the situation. It is only if you assume that values *are on the same level as necessities that it makes economic sense to gain by relieving someone else's dehumanization.* 

It isn't that I am "fixing up" economics by attaching ethical restrictions to it; what I am doing is saying that the economics that allows such transactions is *inconsistent economics*; it is economics that doesn't recognize what the economic reality is, because it is treating robbery as if it were an ordinary transaction, and is treating a threat of greater loss as if it were a promise of gain.

#### Chapter 5

#### Service, cost, and price

here is a further complication here, however, and to discuss it, we have to introduce the concept of service.

A *service* is an action of value or necessity to another person, performed in exchange for a value or necessity.

#### Compensation is the value exchanged for the service.

A slave serves his master, but is not really performing a service in my sense of the term, because he is not compensated for his actions. He is fed, of course, and clothed and housed; but these are *necessities* which he has a right to as human, and he is spending his time (which, as self-determining, involves pursuing goals) doing nothing to achieve his own goals, but only his master's. That is, the slave's service is exacted *under a threat* of greater dehumanization if he does not perform the service; and so the necessities he receives are not *compensation* for his actions at all. It is just that the owner is trying to preserve his asset, not that he is making a "transaction" with the slave. You will note that slavery is the service-counterpart to swaps involving necessities.

A person who does something out of love for another is also not performing a service, precisely because the lover expects no

#### Part Six: Modes of Interaction

compensation for what he is doing—and therefore, there is no transaction. This is the same as giving a gift to another person, and is not really connected with the field of economics, which involves transactions. In a transaction, both parties have control, and the transaction is freely chosen on both sides; but in gifts or acts of love, it is only the giver or lover who has control—even though the beloved is the beneficiary—because the only thing the beloved can do is accept or reject it. This is precisely the reason "you can't look a gift horse in the mouth"; with a gift, no haggling is possible; you submit to the will of the lover or you don't.

Quite a few definitions are coming up before we can discuss transactions involving services. Here are a couple:

#### Work is activity pursuant to a goal one has chosen.

Play is activity undertaken for its own sake.

*Labor* is activity which transforms some material object into something of value or of greater value to people.

# *Production* is the transformation of a material object into something of value or of greater value to people.

Every service is work, because the exchange supposes that the worker is exchanging what he is doing for something that will enable him to attain some goal of his more efficiently than (or at least as efficiently as) if he hadn't performed the service; so he is headed toward a goal by performing the service (in spite of the fact that the action in itself actually heads the recipient of the service toward *his* goal). But not all work is service, because you are working when you are pursuing your goals, whether you are serving someone else or

not. Thus, a person who is studying philosophy to become a philosopher is working, but it not serving anyone. A philosopher who reads philosophy because he likes it is playing, not working.

And, of course, labor is not necessarily either work or a service. You may whittle wood into little statuettes, not because you want to sell them or because someone paid you to do it, nor because you want the statuette, but just to pass the time. In that case, you are laboring and playing. Or you may labor for yourself if you build your own house, for instance; and in that case you are both laboring and working, but not performing a service. And of course you can work without laboring, as when you teach philosophy to students (performing a service), or when you study philosophy to get a degree in it.

The difference between labor and production is that of cause and causality, as we saw in Chapter 5 of Section 2 of the first part. Labor is the act *which* does the transforming; production is the *action on* the material object: the transforming itself, or the creation of value in the object.

One of the mistakes in the foundation of Marxist economics (and for that matter, in the "classical" economics of people like David Ricardo) was the "labor theory of value," which for practical purposes mistook labor for service. But we will discuss this a little later, because we still need some more definitions:

The *seller-value* of a product or service is the value of the act or object from the point of view of the one who performs the act or gives up the object.

The *buyer-value* of a product or service is the value of the act or object from the point of view of the one who receives it.

# The *cost* of something is what is given up to get it. The *price* of something is what is exchanged for it.

Since services aren't quite the same thing as objects which you swap with others, then we are going to need the distinction between buyer-value and seller-value made explicit.

There are several things to note here. First of all, what I defined as simply the "cost" is what economists talk about as the "opportunity cost" of something, as opposed to the "monetary cost" of it. That is, if you go to the doctor and he keeps you waiting for two hours and charges you twenty-five dollars for the visit, what you actually gave up in exchange for his service was (a) what you would have bought with the twenty-five dollars, (b) the wear and tear on your car and the gasoline in getting to the office and back, and (c) whatever you would have been doing to pursue your goals during the two hours and a half (ten minutes plus waiting time plus drive time) you spent in receiving this service. That was what it *really* cost you; and the twenty-five dollars wasn't a cost, strictly speaking, at all. So "monetary cost" is a sham as a cost, because it is only a cost if it is a loss; and you didn't lose two pieces of paper with pictures on them, you lost what they represented to you: you lost what else you could have spent them for. Hence, only "opportunity cost" is really cost. The twenty-five dollars is the *price*, not the cost.

Secondly, the cost may be less than you would be *willing* to give up; in which case, you have gained from the transaction. If the cost is right at the limit of what you would be willing to give up to get the value in question, then the exchange is an even one, and you wouldn't have entered into the transaction. Economists say that when it is "for practical purposes at" the limit and you engage in the transaction, then it is "marginally below" it, because you see some infinitesimal advantage to tip the scales in favor of actually entering

it rather than maintaining the status quo. Of course, if the cost is greater than the value you gain in the transaction, it would be a net loss, and you wouldn't enter into it.

It is in this sense that libertarians consider all transactions as "free," because if the cost is too great on either side, there simply is no transaction. But this ignores the fact that in dealing with necessities or in cases of robbery, the "cost" is *the cost of greater dehumanization if you don't enter the transaction*. When that is the case, the transaction is not freely entered into, because the person is morally obliged to make it to avoid greater damage. As I said, when one of the objects exchanged is a necessity, the cost of getting it (the giving up of a value for something you have a right to have as human) is *always* too great; it is just that the cost of *not* having it is greater.

Now then, the way the buyer determines the value of the product or service is by what he is willing to give up to get it: i.e., how much inconvenience, how much of valuable objects (or potential valuable objects, if you're giving up money) and so on. The *upper limit* of what the buyer would be willing to give up is *the buyer-value* of the product or service he is buying.

So the relation of cost to buyer-value is that the cost (what is actually given up) is less than the buyer-value (what the buyer would give up if he were pressured enough). My wife and I bought a car some time ago. We had decided that we wanted to pay five thousand dollars or less, but we wouldn't go beyond six thousand. (You can see that this was quite a while ago.) We found a car advertised for five thousand seven hundred, for which the salesman made his request for five thousand four hundred, and I said that we didn't want to go beyond five thousand—which he accepted. I probably could have got him to go lower if I had persisted, but it was a thousand dollars less than I valued it at; and so I was content. There

were some additions to this cost (such as taxes and title and the time we spent looking and haggling), but these were still quite a bit below the value we set on the car.

The way the seller determines the value of what he is offering (his product or service) is by determining what he is giving up in not having this object or in what he would be doing with the time he is spending performing the service. Hence, the seller-value is equal to the cost. The seller's situation is slightly different from the buyer's. He might, to get rid of the product, sell it at below what it cost him, because (a) he realizes that he can't get anyone to give him what is equal to what he gave up to provide it (i.e. no one's buyer-value is that high), and (b) it is only going to cost him more if he doesn't sell it now (in storage or in the fact that buyers are going to evaluate it as less as time goes on). But this doesn't mean that he values it below cost; for him, the sale is a loss, and he is just trying to minimize the loss. So you can sell something below its value, because it is often the case that much of the cost is already incurred before the transaction. But you can't *buy* anything above its value (its buyer-value) because if it's above the value, you just won't make the transaction.

Now of course, in transactions involving nothing but values, there is nothing wrong with the seller's trying to find out what the buyer-value actually is, and trying to sell the object in exchange for something far above the seller's value, so that he gains as much as possible from the transaction. By the same token, there is nothing wrong with the buyer's trying to find the seller-value of the object (or rather, the "floor" below which he simply will not go, whether this is his value or is in fact a loss) and in offering outrageously little for the object, trying to buy it as far below his buyer-value as he can.

The reason there is nothing wrong with this is that the seller can assume that the buyer won't buy if the price he asks involves a cost that is above the buyer-value, and so any price agreed on will be fair

from the buyer's point of view; and the buyer can assume that the seller won't sell unless either the price offered is above the seller-value or is the highest he thinks he can get from anyone else; and so the transaction is fair from the seller's point of view.

But is it really fair if the seller is taking a loss? Yes, actually, because the seller is *in the business* of offering to people things that he predicts that *they* will find valuable. When he takes a loss, no one had previously contracted with him to make his product or perform his service; he is just offering the product or service in hopes that someone will want to use it to pursue his goals. Hence, if buyers don't find the product or service valuable enough to cover his costs, then (absent dehumanization, now), it's not their fault that he made this mistake; and they are actually helping him minimize the adverse consequences of the mistake. So the transaction is not unfair.

Of course, this quoting prices and counter-quoting and so on is called *haggling*, which is actually the normal and natural way of doing business. The reason it is normal and natural is that, as I said, there is no real value for anything. Haggling does *not* try to establish what the "true" value is; and in fact, the result of most haggling is that each party thinks that he has taken advantage of the other.

And he has, actually. The seller has taken advantage of the buyer, generally speaking, because the price agreed on is *above* the seller-value; and the buyer has taken advantage of the seller because the price is *below* the buyer-value. So again, both are gainers, because it would be very rare that the buyer-value and the seller-value of whatever is exchanged would be exactly the same; and unless the buyer-value is above that of the seller-value, no exchange will in general take place (except for the case of the loss we talked about).

Then what is the price?

#### The price is the compromise between the buyer-value and the

seller-value.

That is, it is something somewhere in the middle that the two parties agree on, given that each is approaching the transaction with a different notion of the value in what is for sale.

And this, of course, is the reason why the Third Great Myth is a myth and is not true. The price is not something that comes from the *product* that is for sale, but is what comes from the *process* of haggling. It does not reflect a value in the object at all, but rather is the result of the "clash," if you will, of *two* values. This needs stressing as a formal conclusion.

# Conclusion 13: The price of a product or service, as the compromise between the buyer-value and the seller-value, does not reflect any value of the object at all.

I have been talking about this in terms of haggling, because, as I said, this is the normal way of establishing price, and brings out what is actually going on—and is the way prices are arrived at still in many, many places in the world. In the markets and bazaars of India and Cairo and other places, everyone knows that things don't have a "real" price, and that the salesmen who are clever hagglers get higher prices than the people next to them selling the same product.

Things become complicated, however, when manufacturing is introduced, because the manufacturer simply cannot haggle over prices for several million pairs of jogging shoes every year; so something else must be done to get things sold. What happens is that the manufacturer *guesses at* a price that will be the upper limit he thinks he can get and still sell all that he has manufactured (because he has another several million coming off the belts next year, and you've got to clear the warehouses or pay for storage); and then he

attaches this to it and you either buy at this price or you don't buy.

This creation of a "take it or leave it" price for the buyer actually confuses the issue of what is really going on in establishing prices; but it is where most economic theories start in trying to figure out what price represents. They assume that each product is offered to everyone, and so they look at what "everyone" offers for "any" product of this type (i.e. the average price they think it should sell for); and this leads to the notion of the "market" and "supply and demand" as determining prices.

Some more definitions:

The *market* for any product or service is the set of all buyers who want to buy that product or service and the set of all sellers who offer it.

The *demand* for the product or service is the number instances of it that buyers will buy at a given price.

The *supply* of the product or service is the number of instances of it that are offered at a given price.

Supply or demand is *elastic* if it changes when the price changes.

Supply or demand is *inelastic* if it remains the same when the price changes.

Let us first look at the way Marx analyzed this. For him, the

market price reflected the "exchange value" of the product,<sup>35</sup> which came about because of the cost of production, given competition. The idea is that all firms try to sell at the highest price they can. But once there is competition, competing firms would try to sell at a lower price so they could sell more, and so the price would drop to the point where lowering the price would be taking an actual loss, and those who sold at this lower price would, of course, go bankrupt and disappear. Obviously, this floor is the cost of production.

The cost of production—for Marx—reflects the amount of labor it took to make the product, plus the amount of labor it took to make the components and the machines and so on (what is now called the "capital"); and so the "exchange value," or what determines the "real" cost boils down to the amount of "abstract human labor" that went into it; and the price amounts to putting a dollar value on the labor-time embodied in it. The actual raw materials, as we will see, in their natural state have no "exchange value." They acquire it by the labor that it takes to get them ready for further production.<sup>36</sup>

His "dialectic" basically goes this way: The manufacturer looks to his cost of production (labor, overhead, materials, etc.) and sets his

<sup>&</sup>lt;sup>35</sup>Marx did recognize a "use value" to the owner, but for various reasons, in exchanges, it got buried in this notion of the "exchange value."

<sup>&</sup>lt;sup>36</sup>The reason that it is "abstract human labor" (i.e. "average" or "generic" human labor) is that it doesn't matter how hard a given person actually has to work at some definite job; it's the average amount of work that it takes to do that job. And so the labor "embodied" in the work, giving it its value, is not the *actual* labor that went into making it, but this generic "amount of human labor." That is, if Henry's lack of skill is such that it takes him six hours to make a pair of shoes, and Frank can do it in two hours, it doesn't follow that Henry can sell it for three times as much as Frank's shoes. It's not *worth* three times as much in the market, but only—according to Marx—what the *average* pair of shoes of this type cost in terms of "human labor as such."

price as high above this as he thinks he can get and still sell all he produces. If he manages to sell everything at this price, he pays his costs and pockets the rest as profit. Other manufacturers, seeing him making high profits, then get into the industry, charging the same prices and making the same profits, but increasing the supply at that price—until the demand is used up. There are now leftover items for sale. Someone cuts the price and sells all he can make, with this lower profit margin—and now gobbles up a huge chunk of the market (having taken advantage of the greater demand at the lower price). So now the other manufacturers have to cut their profits too or they will go out of business.

There is, however, a time-lag here. Even at this point (where some have to cut their prices and profits) there are still new entrants into the industry because some latecomers started producing before or as soon as the profits began to fall—or even somewhat after they began to fall. So the supply is increasing at this lower profit margin, which forces lower and lower profit margins if everything is to be sold; and eventually, the price drops to the cost of production, with no profit at all.

But then, of course, there's no advantage, and no sense, in producing the product.

Therefore, shortly before this point, the smart manufacturers have taken their money out of the industry and moved it somewhere else that makes high profits; and the rest follow suit, but not soon enough that they don't take a loss from selling things below the cost of production—because after all, they have money invested in plant and equipment, and you can't just let that go. But either they go bankrupt or they get out of the industry licking their wounds.

While they're doing this, of course, the supply is decreasing, until it reaches a point where the demand is greater than the supply—which now means that the few poor fools who couldn't get

out while the getting was good can now begin to charge higher prices and make a profit again. And given the time lag, the supply still decreases for a while, making profits rise higher and higher until it becomes an attractive industry to invest in once more, and the cycle begins *da capo*.

The turning-point of this, Marx reasoned, was the cost of production; so the price as determined by supply and demand will always hover around the cost of production, moving above and below it; so it is the cost of production, for Marx, which is the real "equilibrium price" (using "equilibrium" in the sense in which we used it in describing "biological equilibrium" in Chapter 2 of Section 1 of the third part—a point around which things fluctuate), even though the product probably never sells for *exactly* that price, or if it does so, it does so only briefly on the way up over it or down below it.

But now into this comes the "abstract human labor" and "exploitation of the worker." You see, the manufacturer has three groups of costs: labor, materials, and plant-and-equipment (what we now call "capital"). He has to buy the materials and the building and heat and so on from suppliers. But in a capitalist economy, he can't haggle with these suppliers and has to take the market price for what they sell, which of course hovers around their cost of production. Hence, the only thing the manufacturer has any real control of if he wants to cut costs is the wages he offers the laborers and the number of laborers he hires. So as far as he's concerned, he has a fixed lump of cost (the "capital") he can't do anything about, and so if he wants to make a profit, he has to cut labor costs. And what this amounts to is that he has to see to it that what he pays each laborer is *less than* what the laborer's work allows him to sell the finished product for. Hence, his profit comes from "exploiting" the laborer: paying him less than what he gets out of him.

#### Section 2: Economics

That is, the "exchange value" of the product is the amount of human labor embodied in it. If the capitalist pays the laborer what is equal to the value of his *labor*, then the exchange value of his product (which in the long run shows up as the selling price) is the labor embodied in his materials and plant-and-equipment plus the labor of the workers, and there is nothing left over for the capitalist. So the capitalist has to figure out a way to pay the workers less than the value of their labor, because he can't save on the materials and overhead, since the market determines their cost.

But of course, his suppliers are in the same situation; they're in business to make a profit, and so they also have their fixed costs, and the profit has to come from exploiting their workers; and so on back down the line, until you get to the ones who supply the raw materials. As these raw materials exist in their natural condition, they're of no value to anyone, because (a) they're not in a state to be used, and (b) they're underground or in the field, not at the factory. Hence, the *labor* of getting them into a condition to be used is the *sole* value they have, economically speaking.

Hence, the value of the raw materials is the value of the labor in making them fit to be worked on; and since all the values up above this are the cost of the raw materials (in their labor-transformed state) plus what someone has done to them to get them into a state to be further transformed (or to serve as buildings or machines), then the *whole* cost of production of any product is actually nothing but labor; the "rawness" of the raw materials has no value at all.

But since the cost of production is the "true" price of something (the price toward which all price changes tend), and the true price of something expresses its "true exchange value," then we have the labor theory of value.

Now how is it that capitalists can get away, even in the long run, with giving wages that are below the value of the labor that the

workers put into the product? Ah, here is the dirty little secret of capitalism, according to Marx. *There is also a market for workers*. That is, there is a supply of workers that the capitalist can "buy"—or perhaps I should say "rent," because he only buys their future labor and only for a designated time. The worker "owns himself," and just rents out his *labor power* to the capitalist. That is, he rents out his body, which is *capable* of doing the job later on today and tomorrow and so on, and he agrees to work for a certain length of time, using his "labor power" in actual labor, putting value into the product.

Now since the manufacturer buys labor-power in the market, then there's a market price for it, which is independent of the desires either of the manufacturer or a given laborer. Why? Because manufacturers in general want to pay as little as possible, and laborers in general wants to get as much as possible for their future labortime. If there's a short supply of labor, the labor side wins, until the price of labor is so high that the manufacturer's cost rises above the market-price for his product, and he goes out of business—throwing his laborers out of work. This increases the supply of labor, and so the workers have to lower their price in order to get jobs, because they're in competition with each other for the small number of jobs available.

So the price of labor drops until the workers simply can't survive at the price they get for their labor, and they die (or get sick or weak and can't work). And this decreases the supply of workers, and so the price has to rise so that the manufacturers can staff their companies with the small remaining supply of workers.

Note that the "equilibrium price" here is *the cost of survival of the worker*. That is, it is enough so that he can continue to live and be healthy enough to be able to show up for work. If he holds out for a higher price, then with high unemployment, he gets no work and dies off. Thus, even in the labor market, the "exchange value" of the

worker as a worker (the value of his "labor power") is his "cost of production" as a human being capable of working—what it takes to keep him alive. That is, the exchange value of a worker is the amount of abstract human labor that goes into giving him minimal food, clothing, and shelter—just enough so that he can keep working.

Now this "cost of production of the worker" himself, so to speak, which is reflected in the price of labor, the amount of money that the laborer is *worth* in the market place, is *considerably less* than the amount of labor that he *actually puts into* the product that he is making. The capitalist doesn't really want *him*, he only wants his *labor*. But he has to rent his labor-*power* at the market-price (because he has to hire him before he actually does anything); and he finds that he can sell his product for *more than* the cost of the materials and the cost of the labor *power* he rented, because the actual labor the worker produces has a greater value than the labor *power* he represents as a cost to the capitalist.

And the tragedy is that if a given capitalist wants to pay his workers what their actual *work* is worth (meaning he would just break even and not make a profit), he will find that other capitalists will undersell him, by paying workers less, but still above their "cost of production" as laborers, and so he will go out of business. And so he *must* pay workers less than their work is worth, and *must* make a profit by siphoning off some of the value of their labor, while he does no work himself. And since for Marx, what labor (the transformation of the material world into something useful) is is the essence of what makes humans human,<sup>37</sup> the capitalist is using for his own purposes some of the very humanity of the worker, without (by working)

<sup>&</sup>lt;sup>37</sup>The idea here is that humans evolved by being the creatures that didn't adapt themselves to their environment, but adapted the environment to themselves; and language and all the things we think of as "human acts" were consequent upon this.

being human himself.

Sounds logical, doesn't it? And that's why Marxists still exist. What it says is that the capitalist system, which is driven by profit, is inherently evil and inhuman, and necessarily exploits the workers. The workers don't own their own humanity (they've sold their labor power, which *is* their essence as human: they've sold their bodies); and the capitalist doesn't have any humanity of his own, since he does no work. And so the workers' humanity is "alienated" into the capitalist's hands, and his is alienated by having others perform the human acts he should be performing. Nobody's really human.

And this gets worse and worse as time goes on, and competition forces capitalists to cut costs more and more. The only costs they can cut are labor costs, and so they invent more and more efficient machines that do more and more of the work (because after all you don't have to pay a machine any more than the electricity to run it), and more and more workers lose their jobs and compete with one another for the few jobs that are left, and work longer and longer hours at starvation wages, and eventually die. And meanwhile the capitalists are producing more and more widgets, and the dying laborers can't afford to buy them, and so the capitalists also shrivel up and die. The system is not only evil, it is bound to collapse in the long run. And, of course, in getting to the long run, misery increases exponentially.

But Marx thought that there was no law that said that everything *had* to be bought and sold in the market. Why not just produce, paying what the value of the product was, letting the *workers* make the profit based on the difference between what it cost them to keep alive and the value they put into the product—just as was done in the old days with a single cobbler making shoes? Couldn't manufacturing be structured so as to avoid this exploitation?

See, if you could do away with capitalism altogether, and make

every company a non-profit company, with all of the selling-price being distributed to the workers, then why couldn't you manufacture everything that everybody needs and wants, and just distribute the value (the price) according to the actual labor that went into it? And as machines become more sophisticated and take up more and more of the "labor," then the work week becomes shorter and shorter, and products become more and more abundant. And since less and less *human* labor goes into producing them, their value and so their price decreases to a mere pittance.

So in the limit you make only twenty-five cents because you worked an hour last week. So what? What hardship is that if you can go and buy a BMW for a nickel?

Eventually, things will become completely automated, and nobody will have to work, and we'll just go pick up whatever we want for free—and we'll "work" at whatever pleases us—or in other words, we'll spend our time playing. So if we could get rid of capitalism, eventually we could get rid of all its evils too. If we gave Communism a real chance, that is.

—The only trouble is that it doesn't work that way in practice.

You see, the whole logic of this collapses if you assume that there isn't any real value to something, let alone one reflected by the price. In that case, the worker's work doesn't have *a* value, but only its value from the worker's point of view and that from the capitalist's point of view; and the wages are the compromise between these two values. In this case, the worker is being paid *more* than the seller-value of his (future) *work* or he wouldn't take the job. But he *is* being paid less than the *buyer-value* of his work, or he wouldn't get hired.

I hasten to say it's not that rosy. On the supposition that work is a necessity, exploitation is possible; but let us defer this for the moment. The point I am making here is that, if you deny that the

price reflects an actual value, you there's no reason to assume that the system *automatically* exploits the worker. If you don't deny it, then you have to say that the *true value* of the worker is how much work it cost to produce him; that *is* how much he's worth as a worker, and it has nothing to do with the value of his work; so that if you pay him the value of his work, you're paying him more than he's worth as a worker.

But even on Marx's own terms, the logic is faulty. The worker produces the product only in cooperation with the other workers and under the supervision and direction of management; and the efficiency of a team effort results in something that isn't the same as the sum of its parts; so there is something about the "teamness" of the team that does some of the work over and above what each of the workers does; and the fact that there *is* a team is due to the capitalist—and why shouldn't he take his pay for this share of his in the "value" of the product? The "surplus value" on this showing is due, not to the discrepancy between the value of the worker and the value of his product, but between the value of *his work as isolated* and the value of his work as *integrated* with the others.

The whole point of capitalism as a system, Marx recognized, was the division of labor, *which made production more efficient*. But then *that* means that *not all the value of the product* (supposing it to have a "real" value) *is the sum of the individual labors put into it*. There is this intangible addition due to the fact that the workers are acting cooperatively.

But then that means that the *labor* theory of value is false; and once that is falsified, the whole house of cards falls down.

Nevertheless, the historical view of the market value (the value that was supposed to be expressed by the price) was the labor theory of value, and capitalist economists saw what a devastating critique Marx did of capitalism based on it. So they scrapped the idea of

trying to derive the value from the supply side of the equation (the cost of production), and took the notion that Marx called the "use value" or the "value in use" (which he showed reduced itself dialectically to the cost of production to the extent that it was relevant in exchanges) and developed out of it the "utility" theory of value, looking at things from the demand side.

In subsequent, non-Communist economics, then, the price reflected, not the cost of production, but the demand. Instead of assuming that there was a demand "out there," and looking at how supply adjusted itself to it as to an independent variable, economists noted how the introduction of a new product created a demand that wasn't there before (because nobody had thought of having anything like that) and how changing the asking price changed the demand, and so on. It was the same dialectic, but from the other point of view. But now, since the real value lay in how much people wanted a given thing (how "useful" the average person found it), then there could be no question of paying the worker less than the value of his work. The value of his work now reduced itself to how much the entrepreneur ("Capitalist" had acquired a bad name) wanted his work; and he, being the supplier, had to create a demand for his potential work if he wanted to sell it.

This notion of value, of course, let economists adjust everything to the fluctuations of the marketplace, because the value on this notion is just what they now called the "equilibrium price," or the price at which the demand is fully satisfied. If more people decide they want something and can't get it at this price, then they would be willing to pay more for it, which means that the value went up, and the price now adjusts itself upward to meet this new value; and if the supply outstrips the demand, then fewer people are willing to pay the higher price, and since the value went down, so does the price.

With the "utility" theory of value, there's no assumption of an actual *embodiment* of some quality in the product; it's simply the sum of the perceived utilities (what I called "buyer-values") at any given moment, and so can fluctuate.

Well, what's wrong with that? Doesn't it describe the way things are? No, because, though it *does* describe what you might call the aggregate buyer-value, it doesn't have anything to do with the aggregate *seller*-value. The assumption is that the cosmetic manufacturer who makes his product for ten cents and sells it for ten dollars is selling it for its *value*, because in fact if he sold it for, say, fifteen cents no woman would buy it because if it's that cheap it can't give her *beauty*.

And, you might think, it is really the seller's idea of its value, too; because the fact is that the cosmetics are really worthless to the seller (what can he use makeup for?), and so any use they have for him is the use the potential buyers will find in them. Hence, the value he sees in the product (the seller-value) *is* the value the buyers see in it—which means that the price reflects his guess as to the product's value; and if he sells all he makes, his guess is correct.

I mentioned that Marx did a similar analysis of what I have been calling the buyer-value and seller-value, and he just as logically showed the opposite conclusion: how the buyer-value reduced itself to the seller-value; so this analysis should create a certain amount of suspicion.

First of all, if the seller sells below the cost of production, does that mean that he regards the object as really not as valuable as it cost him to make it? Suppose a shoe manufacturer here has a cost of production which allows him to sell shoes for forty dollars a pair. Foreign competition comes in and their shoes sell for twenty dollars, far below his cost because of cheap labor. Does he really think the *value of his shoes* (even if it's their potential usefulness to consumers)

has declined just because his competition has cheaper labor? But nobody buys his shoes any more, and so it must have.

Secondly, it's perfectly obvious that in a monopoly situation, the producer can dictate prices simply by curtailing and expanding supply (since that's what monopoly is: control over the supply by one supplier). If he lowers the supply, the price goes up, because competition among buyers will force those who want the product to pay higher prices. But does this really mean that the *value* of the product increased just because the producer decided to produce less? It's the same product as before, just as useful as it ever was. How is value related to *usefulness* if the same usefulness means different values? Value was supposed to be created by demand; but in this case, it is established by supply.

Thirdly—and this is important—if you take this notion of value, legitimizing the "equilibrium price" in the market as what the value of the product or service at the moment "really is," then in cases where the product is a necessity and demand is inelastic, you have something whose value is *really infinite*. Brain surgeons know that they can charge sixty thousand dollars for an operation and get it; therefore, their time wielding the scalpel is "really worth" twenty thousand dollars an hour? When they charge a hundred thou for the operation, then they find that they can't get patients—not because patients wouldn't pay if they could, but simply because they can't raise the money, no matter how far they try to go into debt. So their time isn't really "worth" thirty-three thousand dollars an hour, but only twenty thousand, based on the accident that no one has enough resources to pay them, not on the fact that if they did, they would.

But does that mean that the operation is perceived as *more useful* by the patient than keeping his bank account, his house, and his car? Utter balderdash! The patient *has* to pay, and the operation is no more "useful" to him than staying alive is "useful" to him when he

hands over his wallet to the robber.

But if the value of something is based on what the demand is, this means that it is based on the perceived usefulness to the buyer of the product or service; but then either you accept the distinction between values and necessities and say that the value of the necessary item is *nil* (because it's something that the buyer has a right to take for granted), or you don't, in which case, the value of the necessary item is *infinite*, and the price doesn't reflect the value, because the equilibrium price is the price above which people *have* to forego the item because they simply don't *have* the money, not because they wouldn't buy it if they had it.

Fourthly, if the price is based on demand and therefore on the average buyer's perception of usefulness, then it follows that *wages* are determined solely by how useful the employeer finds the employees. If these are starvation wages, the employees' services aren't really worth more than bare survival; and the fact that he's a human being who is self-determining and forced into a condition where all he can do is work and go home and eat and fall exhausted into bed to get up and work tomorrow is completely irrelevant—because this is the *seller-value* of his work, and his work is worth only what buyers (employers) think it is. And of course, things like "equal pay for equal work" and "jobs of comparable worth" are out of the question. A job is *worth* only what the boss thinks it is, or only what people actually get paid for it.

It's interesting, isn't it? The entrepreneurs collectively (or individually, in monopolies)—that is, the suppliers—have control over the prices or the value of what they sell, even though value is based on utility of the buyer, because as the supply increases or decreases, the demand decreases or increases, and more important, the price (the value) increases or decreases. On the other hand, it isn't the workers—the suppliers—who have control over the value of

their work, but the entrepreneurs collectively, because the workers have no control over supply, but entrepreneurs have control over demand (by deciding to do things like introduce machines).

This is one of the reasons why people think that capitalist economics is essentially an inhumane system, with everything skewed to the whims of the capitalist.

But, fifthly, if government fixes prices, then government fixes the *value* of the product or service, because the price reflects the value, doesn't it? No, these people say, only the market price reflects the value. The problem with price fixing, they claim, is that these artificial prices *don't* reflect the value of the item, which leads to black markets and various other ills. But when a monopolist fixes prices, this reflects the value? Yes, because the market stabilizes at the price he fixes, since he makes just the number of items that will sell at that price.

Finally, if you consider that the value of the item is its utility, then why is it that people in general will pay a lot for one or two pairs, but won't keep buying and buying shoes? The other assumption in both capitalist and Marxist economics is the Second Great Myth: that everyone is infinitely greedy.

The way the economists get out of this is with what they call the "law of diminishing marginal utility." The idea is that your first pair of shoes uses up most of the "utility" of *shoes* for you, even if your wants are infinite; and so you wouldn't pay as much for the second one, because you've got other things to do with your scarce resources, and the leftover "utility of shoes" is rather smaller than the original one—and so on for the third and fourth pair.

In real life, however, a person buys a pair of shoes for a specific purpose: to go with certain clothes, or to use in certain definite activities. The only reason he would buy a second pair identical to the first would be something like wanting two pairs from the

beginning, so that he wouldn't be abusing the one pair by wearing it every day. In that case, he would be perfectly willing to pay the same price for both. But all of a sudden, a third pair becomes totally valueless to him—unless it's a pair of a different type of shoes, such as jogging shoes. In this case, he might be willing to pay twice as much as for the first two pairs. If he also wants to play golf, then he'll pay for golfing shoes, and there's no "diminution of the utility" for him at all, because *each* pair has a *definite purpose*, which exhausts *all* of its value for him.

But even on its own terms, "diminishing marginal utility" makes no sense. When a person buys a pair of shoes, his available resources diminish. If he has a hundred dollars and buys a forty dollar pair of shoes, he has sixty dollars left. Now in order for "diminishing marginal utility" to work, his next pair of shoes would have to be bought for less than twenty-four dollars (four tenths of his available resources). If he pays thirty for it, then obviously this means that the marginal utility has increased. But even if he pays twenty, it's hard to see how this reflects a diminishing marginal utility, because the sixty dollars he now has can fulfill many fewer of his desires than the hundred originally could. Paying the twenty for the pair of shoes now only leaves him forty dollars for all the rest of what he wants; so in spite of the fact that it's a lesser *percentage* of what he has to spend, what he has to spend is now so small that this percentage leaves him very little room to maneuver. If the price of everything diminished in proportion to the percentage of the money you have available, everything might be fine; but things remain just as expensive as they were. That is, when the man bought the shoes with four tenths of his disposable resources, he could distribute the six tenths among, let us say, twenty other items of various prices. When he buys the second pair of shoes, leaving him only forty dollars, he now finds that he can afford only five of the things he could previously afford. Thus,

spending less than four tenths of his resources the second time cuts off three fourths of what he can actually have with the remainder. Presuming he knows this, then in relation to what he would actually like to have, the second pair of shoes had to have been extremely valuable to him, since in fact he had to give up a lot more of what he wanted to get it (its *cost* to him was greater) than the first pair was, in spite of the fact that the money he spent was (a) half of what he paid for the first pair, and (b) a lesser percentage of his disposable resources than the first pair.<sup>38</sup>

But this "diminishing marginal utility," generalized, is supposed to account for various market phenomena such as diminishing demand over time as the market gets saturated. This shows what happens if you try to mathematicize economics; you get into an unreal world which directly contradicts the real one, but which sounds very exact and accurate.

So if you say that the value something has is really how much the aggregate of buyers want it, then you're in as much of a mess as if you say that the value is really the abstract human labor-time embodied in it.

But then there's no way out of this, is there? Communist economics, basing its notion of value on seller-value, amounts to having the government fix prices and wages looking, presumably, to the cost of production. This leads inevitably to padded costs, inefficient production, high prices—and exploitation of the workers once

<sup>&</sup>lt;sup>38</sup>I read this—actually a better—critique of "diminishing marginal utility" quite a number of years ago in a book I took out of the library, whose title was something like *Values*, on value theory in general, but whose author I don't remember, and which I haven't been able to track down since, because the library no longer exists. Whoever he is, I am grateful for all he taught me in that book, and if I have stolen some others of his ideas because I don't remember that they were his first, I hope he forgives me for not acknowledging where I got them. This is the best I can do.

again, who aren't in a position to pad their "cost of production." Capitalist economics, basing its notion of value on buyer-value amounts to letting the market determine value, which means that buying necessities pushes the buyers into abject poverty and the suppliers into outrageous wealth on their backs—legitimizes robbery, in other words—and at the same time, it forces those for whom selling is a necessity (like workers, who have to work or starve) into selling for a price that is inhumanly low, and so legitimizes exploitation.

The way out is to say that the price does *not* reflect a value at all; price is a compromise between *two* values which are irreducible to each other: the buyer-value and the seller-value. To "reduce" one to "really" being the other is falsifying the *real* situation. Neither of these, it cannot be stressed too much, is the "real" value, nor does the price reflect the "real" value. This way, prices can fluctuate from day to day without the silliness of saying that things have bounced up and down in their value (have become more or less useful) from day to day. Further, you can say that the value of a worker's work is not just what the boss thinks he's worth; it is just as much what *he* knows he's worth, because he knows what he's giving up in order to work for the boss, whatever the boss thinks about how much the work fits into his pursuit of his goals. Each of these is a legitimate assessment of the value of the work, and neither is reducible to the other one.

And I personally think that until economists recognize these two distinctions: that between values and necessities and that between buyer-value and seller-value, their theories will be like the Ptolmaic view of the heavens. You *can* adjust that view, by tinkering with it, to account for the perceived motions of the heavenly bodies based on determinants and epicycles; but the adjustments are always *ad hoc*. Similarly, you *can* take either Marxist or capitalist economics and adjust it to fit what's happening to prices and so on, but you do so

only at the expense of sanity. Actually, it's mob psychology which determines market prices, not economic laws, as anyone who has looked at the stock market can testify.

Well, I think I've made out enough of a case that I can take my view of buyer-value and seller-value and price as the compromise as not obviously overridden by other economic theories. So let us see what is implied in my view.

5: Service, cost, and price

### Chapter 6

### Introducing money into the equation

First of all, let me say a word about money. Economists call it "buying power." But what do you have when you have it? Not a piece of paper or coins, because you can have the same amount of money and spend it just as effectively if you write a check or give your credit or debit card to the salesman. The first difference between cash and these other forms of money is that the pieces of paper with famous people's pictures on them are *legal tender*, which means that if you offer them in payment, the person can't refuse to accept them, whereas he can refuse a check or a credit card. But the legal tender does not "represent" the gold in Fort Knox or any other actual object (because there's much less gold than the amount of legal tender in circulation).

If you pay with a check, you are asking your bank, it seems, to "draw out" a certain amount of your money which it has "in storage" and hand it over to the store. But the bank doesn't have anything of yours except a *number* somewhere in the bowels of its computer; and it doesn't draw anything out at all; it just reduces the number by the amount of the check and then sends a number to the store's computer equal to what it reduced yours by. The only tangible thing that happens is that slips of paper confirming that it has done this get sent to the people involved.

### Section 2: Economics

And when you pay with a credit card, you don't even have a number in your account. You ask the bank to pay (send a number to) the store, and you agree that next month you'll send them a number to cancel what they did—or if you wait longer, you'll send them a larger number.

The *only* tangible reality money has, then, is the number. But what is it a number of? Obviously, it's an amount of *something*. Well, depending on how large the number you can command is, you are able to buy products or services. The number doesn't tell you which ones you can buy, but only the upper limit of the total you can buy. You can even buy a certain amount of sin, if you want (but be careful, it's expensive); the money doesn't care what it's used for.

But when you buy something, then you buy it for its value to you, which means that it enables you to *do* something you couldn't do without it. Goals, remember, are always activities. Even if you buy a painting, you buy it so that you can look at it in your living room, or perhaps just so that you can tell people you have an original Ruthven, or maybe so that you can prevent anyone else from seeing it.

So money is a quantity of the ability to do things, without specifying which things. But when you *can* do this or that or the other, then you are *free*. So money is a certain quantity of freedom. This, of course, is what makes money so desirable; because the more you have, the freer you are to pursue whatever goals you want.

But that's not quite all, because you can exercise the type of freedom money is only in a social context. You may want a given painting, but you're not free to have it and do what you want with it if the present owner won't sell at any price. Money is only useful in the context of a transaction, where there is someone who wants an amount of freedom in exchange for whatever value you want. Hence, if you want to spend money, you have to do it to someone who will

### Part Six: Modes of Interaction

*provide you* with the value you want; or in other words, who will *perform the service* of giving you the object with the value, or whose service (like that, say, of a teacher) *is* the value. Even if the person, then, is a manufacturer, he is actually providing the *service* of transforming something into what has the value you want; and so from his point of view, what he is selling you is his service, not the material thing.

Conclusion 14: The seller-value is always the value of the seller's *service* (what he gave up to perform it), even if what he is offering for sale is a product.

But this freedom to use the services of others to advance your own progress toward your goals is not an ability to *enslave* others, because you can't buy unless they are *willing* to sell. And then to take the final step, they won't accept money unless it also represents for them the freedom to buy whatever they want, which means that everyone *they* give it to must also recognize that it is the freedom to buy whatever they want. Hence, everyone must recognize that the particular thing you exchange (whatever it is that has the number on it) is this thing called money. What *embodies* money (as Marx would put it) has to be *universally recognized*, or the one who receives it won't see it as a certain amount of freedom to buy what he wants.

Hence, we can now make the following definition:

*Money* is a certain amount of freedom to use others' freely offered services to fill one's necessities or make progress toward one's goals, recognizable universally as this amount of this type of freedom.

I will point out later that it is one of government's functions to

define what is to be used as money, and another of its functions to keep it stable, so that a given amount always (within reason) represents a given amount of freedom (i.e. that a dollar buys for anyone the same total amount of products and/or services). If money becomes unstable, as in inflation, then when you pay ten dollars for something, you gave up a certain amount of freedom as universally defined; but when the seller goes to buy something next week with the ten dollars, he has *less* freedom than he received from you. This is a *very serious moral fault* of government, because it cheats *all* receivers of money, and it makes transactions using money fail in their purpose. I will leave to the discussion on civil society what criteria government should use in picking out what should serve as money.

The idea of using money for a transaction is that the people who are swapping don't have to look for the person who has just what they want and wants just what they have; they can look for the person who has what they want, and offer him an amount of freedom as the price, and then he can go look for anyone else who has whatever he wants to exchange this lump of freedom for. Transactions are obviously much more efficient in this way—in fact, transactions are only really understandable in terms of money, even when bartering. You will notice that in our original discussion of the swap of the apple for the orange, we were using pears as a kind of money.

With that out of the way, then, we have discovered that even when the seller is selling a product, what he is actually giving up (beyond, of course, what *he* had to buy beforehand) is *his activity:* the time he is spending doing whatever he does to you or to prepare the product so that it has a value for you and to get it into a position where you can buy it.

That's very interesting, because what it means is that he is giving

*up some of his reality for your sake*, and what he wants in return is *freedom to induce others to act for his sake*. Since the transaction is what distinguishes economic activity from other types of interaction, then we can make the following definition:

An *economic system* is a system of interaction, organized in such a way that the subordination of one person's own reality to the goals of another person is compensated for by receiving the ability to subordinate others' reality to his own goals.

This is why economic activity is the positive counterpart of rights. Its basis is that I will put aside my own pursuit of my goals and help you pursue yours if you will give me something that allows me to get others to put aside their own goals and help me toward mine. In that sense, the buyer is serving the seller indirectly in giving him the freedom to use other sellers' services. So economics is mutual service.

So the key concept in a transaction is *service*, not "labor" or even "work." It doesn't matter what you are *doing*, whether à la Marx you are transforming the world into human shape or simply telling someone else what you know, or just sitting with his kids, the point is that he wants that activity of yours in order to pursue his own goals, and you agree to take a setback in the pursuit of your goals for this purpose, as long as he will give you the freedom so that this setback is at least made up for by your ability to have others serve you. This allows the most intangible things to count in economic transactions, and it isn't all just production. But more than this, it allows us to deal with all the different kinds of transactions, an increasingly small number of which deal with manufacturing and production generally as time goes on.

So the seller-value is the seller's view of what his service is worth, and it is measured by what activities he had to give up to perform it.

The buyer-value is the buyer's view of what the product or the service is worth, and it is measured by the relative importance of the activities it enables him to perform. Between these is the money, which each knows stands for a total of various activities, and therefore which represents different things to the two people in the transaction, because they know the various prices of things (and consequently how much money they need to buy what they want).

If, then, we look at a transaction involving money, what are the two parties doing? In order to see this, we have to assume that they have budgets. The buyer takes the total amount of money he has and subtracts from it what goes for necessities (food, house payments, heat, gasoline and car care insofar as it gets him back and forth to work, necessary clothing, etc.); and what is left over is what he can use to pursue his goals (which might involve things like better food and a newer car as well as tickets to the symphony and so on). He has a rough idea of which of these he wants, and how much each will cost.

# A person's *scale of living* is the type of life his resources will allow him to live.

So what the buyer has in the back of his mind is what his scale of living is, and how his available money is divisible into his potential goals, and what the relative importance of each goal is. In actual practice, of course, this is quite vague; but we are oversimplifying here. The point is that he has some kind of idea of what he is giving up when he pays out a certain amount of money. What goals he is giving up for a widget is the buyer-value of that widget.

The seller also knows the kind of life he *wants* to live. He knows how much money he has already, as well as how much money he has to have to meet his necessities, and how much money will be needed

to achieve all his goals. He also knows how much time he spends making the widgets he is selling; and so what he does is divide up the total amount he has to have in order to meet his necessities and his goals for the next year by the number of widgets he sees he will produce next year, and this is the seller-value of one widget.

## A person's *standard of living* is the resources needed to live the type of life he chooses as "really his."

Now we can assume, since we are not bamboozled by the Second Great Myth, that the seller's standard of living is not infinite. He might *like* to drive around in a hundred-fifty-thousand-dollar Ferrari, but he does not have this as a *goal* in his life; he's content with his Buick family sedan. I can say this because there are many people who win the lottery and suddenly become millionaires, and who don't change their lifestyle all that much. In any case, we will take it that the seller's standard of living requires a finite and reachable amount of money each year.

Now in the case of haggling, the seller knows the price below which he does not want to go, because then he won't be able to meet his goals; or in other words, the seller-value is still his "floor" in the negotiation. The buyer knows the price above which he will refuse to buy, and so the buyer-value is the "ceiling" in the negotiation. They haggle and agree on some price in between, which (a) allows the buyer to achieve whatever goal this value leads toward, but also *more* of the other goals than he could have achieved if he had paid a price equal to his buyer-value; so he gains. The seller now has freedom to achieve more of *his* goals than he could if he had sold the widget for the seller-value of it; so he gains also. Both, once again, are better off for the purchase. The introduction of money now shows a little more clearly what is meant by the buyer-value and

particularly the seller-value of something, especially in the sense of the seller-value of the *service* of the seller. "What he is giving up" amounts to "what percentage of his standard of living is represented by the product or service he is selling."

And just as the case with the swap, in the haggling process there is nothing wrong with each person's guessing at what the other's value actually is, and in proposing a price that will come as close to it as possible, irrespective of what his own value happens to be. That is, each person knows what the widget is worth to him; but what he tries to figure out is what the widget is worth to the other person, so that he can (if he's a buyer) have more left over to achieve his other goals, or (if he's the seller) he can guarantee that he'll be able to achieve his goals if he has to sell some widgets under their value for him, that he'll be able to achieve them even if he can't make widgets in the future, or that he'll be able to do some things he'd like to do but doesn't really intend to do at the moment. He can't sell the widget for anything greater than the buyer's value, and so he knows that even if he gets twenty times what the seller-value is, he hasn't cheated the buyer, since the buyer necessarily bought it for at least marginally less than the buyer value, and so the buyer did gain by the transaction.

Conclusion 15: In purchases involving only values, it is perfectly moral to agree on a price that is beyond—even outrageously beyond—the seller's standard of living.

We might as well add a couple of definitions at this point:

A person is *rich* or *wealthy* if his resources are greater than what will enable him to live according to his standard of living.

A person is *"well off"* if his resources are enough to enable him to live according to his standard of living.

A person is *affluent* if his resources enable him to live at a higher scale of living than the majority of people.

A person is *poor* if his resources will not allow him fully to achieve his standard of living.

A person is *needy* or *indigent* if his resources will not allow him to escape from being dehumanized.

This explains why many people who are affluent consider themselves as poor. Their standard of living is above their scale of living, because, say, their standard of living includes driving a BMW, and they can't afford more than an Oldsmobile. But be careful here. You have to distinguish, as I said, between the kind of life you'd *like* to live and the kind of life you'd *work to actually achieve*. Only the latter is your standard of living; so you're not poor of you'd just like a BMW but don't put out any effort to get one.

When you're rich, as opposed to being well off, then when you buy something with your surplus, you don't have to consider what you're giving up to get it—because you're not giving up anything. That surplus money doesn't represent some goal you want; you just have it to throw around. Most of us, actually, are a "little" rich in our affluent society, because we have a certain amount of "mad money" that we use for "impulse buying": that is, buying just because you'd *like* to have the thing in question, and you don't consider what you're giving up in order to get it. The richer you are, the more often your purchases are of this type.

So there's a difference between impulse buying and ordinary

buying, in that impulse buying doesn't advance you to a goal you had, but puts you beyond your goals, toward what the Scholastics call "velleities," or in ordinary terms "daydreams"—while ordinary buying allows you to achieve your goals.

Note that affluence is a relative term; it means that you're living at a higher level than most people. There isn't really a term I know of that is the contradictory of being affluent, where you can achieve all your goals (where your scale of living and your standard of living coincide), but your standard of living happens to be below the level at which most people live. There are a number of non-affluent people in the world; and not only those who deliberately take vows of "poverty." Many people even in our affluent society live just average lives and are satisfied, in the sense that they don't try to do anything about raising themselves beyond this. In fact, many of the people we call "poor" are simply non-affluent, especially many who have been seduced by the blandishments of welfare into not working to get out of the condition they are in, but simply wait for the government check and watch television all day.

Interestingly, just as there are non-affluent people who are not poor, because they're satisfied with where they are, so there are affluent people who are poor, because they have chosen to be above where their resources put them. Some non-Americans look at the ordinary life style we have in our society and regard it as beyond their wildest dreams, and would consider themselves rich if they could live like our lower middle-class; but many in our lower middle-class consider themselves poor because they actually have goals that they can't achieve with their scale of living. Nor are they affluent in our society; because they are in fact living below the majority in our society.

But one of the things that emerges from what we have said is this:

Conclusion 16: A person can determine his standard of living by finding how much money is required for him to be able to achieve his goals. This income level determines his happiness, economically speaking.

This is a very important conclusion. Income above your standard of living *does not increase your happiness*, because your happiness is defined by your goals: what you intend to do with your life. Income beyond this level induces you to do more than what you planned to do with your life, and hence induces you to become a different sort of person from the one you intend yourself to be—and it does this in unpredictable ways. Because you *can* now do something you never thought of before, you say, "Why not?" before you consider, "Yes, but what does it mean for my being the kind of person I want to be? Am I joining this country club because I enjoy golf, or because that's what's expected of a person making my kind of money? Am I going to the ballet because I appreciate it, or do I sit through two hours of boredom because I can afford it?"

This is why riches corrupt; they are an excess of freedom, and since we have the freedom, with numbers attached to it now, we feel some kind of obligation to use it, and we lose control of our lives not because we can't achieve our goals, but because we've lost sight of goals in letting mere possibility lead us on in unforeseen directions.

This is not to say that the rich can't enjoy their wealth, if they know what they are doing. Those born to wealth are perhaps best at this, because they grew up with enormous freedom, and learned that if you want to live, you have to define yourself from within and not be dragged hither and yon by one possibility after another, or stand motionless like the proverbial donkey between the equally attractive bales of hay. Having always had the possibility of buying anything, they only buy what fits what they *a priori* want to be. What they buy

is very high quality, of course, but it is not really extravagant, because they have it under control.

This was recognized as long ago as by Plato. Socrates says to Cephalus at the beginning of *Republic* that he supposes he had been born wealthy because "you don't seem to me to be terribly fond of money, and that's what people who haven't earned it themselves generally feel." He goes on to say that people who have made their own money tend to care too much about it.

Now of course, being rich, though it has problems connected with it, is a lot better than being poor. The point is that there is a rather vast area in between, in which is it possible to be well off; and you can be well off being affluent or not. Riches and poverty are related to *your own goals*, and have nothing to do with anyone else; affluence and its contradictory are comparative between people, and anyone who considers that he has to be more affluent than someone else (or else in his mind he is poor) is making a stupid goal for his life.

And it is this confusion of affluence with being well off (and of poverty as being non-affluent) that is what makes true St. Paul's statement to Timothy: "The root of everything bad is a love for money." The reason is that it puts as the goal of your life the mere fact that you don't want someone else to have more freedom than you have. You want to have more freedom, not because you want to do something with it, but just so that you can do more than the Joneses, because you want them to be economically less than you are.

This, of course, is immoral, and is the vice of *envy*. It is immoral because you want to be a greater human being than other human beings, and there's no such thing. It is also silly because human beings are what they are because they can decide for themselves what they are to be, and objective levels of human activity are irrelevant in

setting goals.

So it is not only moral, but it makes sense out of economic life to look inside yourself and find out the kind of life you want to live; find out how much money you need to live that kind of life; and then find some service that will provide you that level of income, and don't worry about whether you're affluent or not. What more do you want if you've got all you want?

But there's another secret to economic happiness that emerges from the introduction of money into your life: *Money allows a person* to choose as his service what he enjoys doing, if it happens that others want this service.

For instance, I enjoy informing others about what I know. Fortunately, there are a number of people who are willing to pay to be informed about what I know, and there are enough of them so that I can buy computers and sit down in front of them and do one of the other things I enjoy doing even more: write. Some day-Who knows?-people might even buy what I write, and then I could devote more of my time to it.<sup>39</sup> And if there were enough people who would want to see me perform my dramatizations of John's Report of the Good News and Paul's letters, then as far as I personally am concerned, heaven would be nothing more than an extension into eternity of what I would be doing to make a living. I would pay to do these things if I were rich and could induce people to read my books and see my performances; and I have actually been paid for both of these things-not enough to survive, but some. What do I need more money for? I have a lovely house and a wonderful wife and children, who are now grown up and no longer a worry that I'm

<sup>&</sup>lt;sup>39</sup>Then again, as happened, after a certain length of time I retired, and now do what I want, as I want, and when I want. A good deal of it is writing, as it happens, a you can see from this book.

not going to have enough money to raise them properly; I have a dog that delights me,<sup>40</sup> and a car I like a great deal,<sup>41</sup> even though it's getting long in the tooth; and I have my computer and enough time from my work as a professor to spend writing. We can take a trip to the Bahamas to relax every year or so, and to Buenos Aires to see my wife's relatives. I once thought I would like to have a little sports car; but now I'd think twice about it even if I got my reserves up to where I could afford it. My only concern, really, is losing what I have. What do I care if both my wife and I together make about as much money (teaching in Catholic colleges) as one person in my position at a state university would make? It might be nice to have the extra money, but I don't want it.

It is possible to be contented in our affluent society. Just figure out what you want to do with your life, and see if you can get someone to pay you for it. Then you don't have to make a great deal of money, because you're fulfilling yourself doing your service to others.

So a second thing that money introduces into personal economics is this:

Conclusion 17: Money enables a person to choose his service to others, and find something that fulfills his own goals while advancing theirs; and using their money to use other's service to fulfill the rest of his goals.

<sup>&</sup>lt;sup>40</sup>No longer, sad to say. I hope she's waiting for me to go home so I can be with her again. A dog? Why not? That is, my affection for the dog is frustrated (I still miss her) unless I can have her by my side.

<sup>&</sup>lt;sup>41</sup>It finally had to be traded in for one I don't like as much; but my wife has one (which I drive when we go somewhere together) which was beyond my dreams a few years ago.

### Part Six: Modes of Interaction

In any case, introducing money into the transaction involving values doesn't do much but make it a little more complex. But when a necessity is involved, things are a bit different, because new moral issues crop up. But the introduction of money can actually help to solve them. Let us take first the case of the service's being a necessity to the buyer, as in having a brain operation. This is not a value at all to the buyer; and the fact that it's a brain operation and not a tonsillectomy or some other simple operation is completely irrelevant to him. He needs it, and wouldn't get it if he could survive in a non-dehumanized condition without it; so he doesn't want it at all, and how complicated it is and so on is only relevant to him as a buyer in the sense of how much added inconvenience is involved in staying on the operating table for four hours and spending a month recovering as opposed to being on the table for fifteen minutes and going home the next day. The extra skill of a better surgeon is not a value either; because he's not interested in an esthetically pleasing suture or fingers flying deftly through the tissues in his brain; he just wants to be sure that the surgeon has enough skill to do the job and do no damage while he's at it. That is, even the surgeon's skill is a necessity, not a value.42

Now what is the surgeon's seller-value? Not the fact that he knows a lot; not the fact that he's spent years and years in medical school, and spent huge amounts of money getting the diploma. The seller-value of the operation is basically this: the number of operations that can be performed in a year, and the amount of money he requires

<sup>&</sup>lt;sup>42</sup>Of course, proven expertise and attendance at prestigious schools and so on are apt to be guarantees of competence; and in that sense, the buyer takes them into account, since he is weighing the risk of having a botched operation (a distinct harm) against the risk of not having an operation at all. So the surgeon's skill is still not a value, but a necessity, because what you are weighing is potential harms not positive advantages.

in a year to achieve his goals in that year.

All of the considerations about level of skill, cost of training, availability of service, affability, and so on are things which he would think that the *buyer* should take into account in choosing him as surgeon over someone else; or in other words, are his anticipation of the potential *buyer-value* in what he is doing for the patient. That is, when the surgeon thinks of the "worth" of what he is doing in terms of his skill and so on, he is acting as if he were in a transaction involving values, where his "floor" is the point at which he can't achieve his goals, and he's looking at how high he can go above this floor in trying to guess at a price that represents the *buyer's* assessment of what the operation is worth.

And it is here that the fallacy lies. If the transaction were one in which there was a buyer-value, then the surgeon's assessment of how much his service is "worth" to the buyer would be relevant, and the surgeon and the patient could negotiate over (a) whether to have the operation at all, (b) whether to have it from him or someone else, and (c) what the price should be. The problem is, however, that the operation is worth *nothing* from the buyer's point of view.

Before you just react emotionally to this, look at the argument.

As I said in Chapter 3 of Section 7 of the fourth part, the buyer has a human right to necessities, and the brain operation is a necessity, and so something that he has a human right to, not something that he wants.

On the other hand, if the surgeon does his operations gratis, then he will starve. This is his service to mankind, and it is slavery if he performs a service to another and doesn't at least receive compensation (recovery of what he lost) for it. So if he can't get more than just the necessities of his life for the operation, he's dehumanized, just as the slave who "serves" his master is dehumanized even though he receives all the necessities of his life.

Neither has any room to set goals for himself and be self-determining in practice.

So the surgeon has a human right to set goals for himself which he intends to be able to achieve by his service. Hence, he has a right to set a standard of living, and to consider that the seller-value of his service is the ability to live according to his standard of living. Bt there are two other points here that must be considered. First of all, since his service involves a necessity (that the patient has a right to-but not a right against this surgeon), then the surgeon has a moral obligation not to force the patient to pay more than necessary for the service. The patient will pay whatever is demanded, provided he is capable of paying it; so the surgeon can charge twenty times what his seller-value is and the patient will agree. But that means that the patient has not only helped the surgeon achieve his goals, he is making him *rich*. So the surgeon is getting more resources than he knows a priori what to do with, and is getting them from someone who is giving up goals not to advance toward others, but simply to get back to where, as human, he has a right to presuppose himself to be. One is giving up goals to minimize a loss; the other is giving up some time pursuing goals to maximize his gain.

The second point is that it the surgeon sets his standard of living very high, then even if he is only achieving his goals by his high asking price, he is still putting himself economically above the vast majority of mankind—and doing so by exploiting the necessity of the patient.

That is, it is not just enough if you are providing a necessary service, to set your price so that you don't have so much money you don't know what to do with it. If the service you are providing is a necessity, then since you aren't helping people achieve their own goals by it (but simply alleviating their dehumanization), you have an obligation *not* to set your goals so high that your lifestyle (your standard of living) is greater than, say, eighty per cent of the

population. In that case, you aren't helping the people you serve; you are *forcing them to subsidize your extravagant idea of yourself*.

You are forcing them, because they have to have your service; they don't seek it because they want it. You are forcing them, because the transaction doesn't have a buyer-value, and hence the *only* value involved in it is the seller-value, which is *freely set* by you; and so they *have* to pay whatever you ask. Because you are a surgeon, you are no greater than the rest of mankind; and so the fact that you are a surgeon *gives you no right* to live a higher kind of life than the rest of mankind.

I hasten to say that if surgery were a value (as is actually the case with cosmetic plastic surgery, for instance), then there would be no problem in charging so much that you would become rich, even fabulously wealthy. Nobody has to have a face lift; and so if they want to spend ten thousand dollars for one, and your seller-value in the two hours you spend serving them is, say, fifty dollars an hour, there's absolutely nothing wrong with your asking ten thousand dollars for the operation, and in explaining to them your skill and artistry and long training and experience and so on to induce them to accept the fee—which means that you make ten times as much as will cover your necessities and fulfill all the goals you intend to have. You can then buy that villa in Corfu for your third home. Perfectly fine. Your service is *worth* that much.

What! And you mean to tell me that the service of performing a *brain* operation is worth *less* than a face lift is worth? I do indeed. In *that* sense of "worth" (the buyer-value), it is, as I said, worth nothing at all. Think about it. You, the surgeon, are the person who owns the well in the desert. How much is the water *worth* to the man without it? But put yourself out there in the desert now approaching the well-owner, and consider what you think of him when he says, "You give me ten thousand dollars for this gallon of water, and you'll be

able to reach Cairo, where you'll be saved." Ten thousand dollars for a measly drink of water, and he has a well full of it!

Thus, you are exploiting the patient when you become very affluent by providing a necessary service; and the amount of training and so on that went into it is irrelevant.

# Conclusion 18: A person providing a necessity has a moral obligation not to become very affluent from his service.

I would say that someone like a brain surgeon certainly has a right to an average standard of living, and can possibly still be moral if he chooses to be on the affluent side of average. But he has a moral obligation not to go beyond this *even if his patients themselves are affluent and can pay*, because he is providing his service under the *threat of greater harm* to them, and so would be gaining because of this threat. He has a right not to have to suffer from providing this necessary service, and so can live comfortably; but he has no right to live more comfortably than the vast majority of people.

If you want to become rich or if you want to be very affluent, then choose some service that provides a value. Otherwise, you will (if you know what you're doing) find yourself on the side of the goats when the Master says, "I needed a brain operation and you bled me while you removed the tumor."

It is the fact that physicians, surgeons, drug companies, and hospitals do not recognize this distinction that health care takes up over twelve per cent of the gross national product of the United States, with the percentage constantly climbing. They are letting the market determine the price, and the market works only when necessities are not involved; so the doctors and drug company officials can have their BMW's and yachts, and the hospitals can compete for having fancy gadgets (that don't get used much because

there are too many in the city) and can be as inefficient as they like, because they'll get paid.

I do not think that anything short of the persons involved recognizing this as a moral issue will solve the problem. Socialized medicine still allows the providers to charge what they want, and they will still get paid. Government's restricting them (by setting ceilings on their fees, for instance) won't help if they don't see that what government is doing to them is just, because then they'll get out of the "business" of health care or not go into it in the first place, and the supply will decrease, making the remaining ones able to jack up the prices again. It is only if providers of necessities (and this includes lawyers, elementary and secondary school teachers, oil companies, electric companies, and so on) recognize that their business is simply not like businesses that provide values, and that therefore they have a moral obligation not to make themselves very affluent on the backs of those they are reducing the dehumanization of, that we will find a solution to the health-care problem and the other severe problems in capitalist society.

But before discussing the market in money transactions involving necessities, let me point out that the necessity can be on the part of the seller too. In general, a person who is not born affluent must serve others in order both to meet his necessities and acquire the values that will lead to his goals. We are no longer in the initial state of the world, where you can just claim things and enjoy their fruit.

But since a human being is self-determining, and *can* meet his necessities and go beyond them to fulfill his goals by serving others, then it does not follow, as I said before, that you are conniving in the dehumanization of a person if you let him starve when he refuses to work. Supposing the person to have grown to adulthood, we can say this, therefore:

Conclusion 19: A person has no right to receive from others even the minimum necessities of life if it is possible for him to acquire more than the minimum by serving others.

If the only thing he can do by serving others is stay alive, then he is a slave, not a self-determining human being, as I have said so often. But if he can meet his needs and also meet a reasonable number of his goals by working (even if he is still poor), and he refuses to work, then those who do not make him a gift of his necessities are not conniving in his dehumanization. Just as we are interfering with a person's self-determination if we try to prevent him from committing suicide or harming his health (supposing he knows what he is doing), so if he chooses to starve himself to death rather than serve anyone, that is his choice, and no one is harming him by letting him fulfill his choice.

But since service is a necessity as well as a value, then the following conclusion emerges:

Conclusion 20: It is morally wrong for those buying a service from someone to force him to accept a price so low that all he can do is meet his necessities.

This is the exact counterpart of the exploitation of the buyer-necessity. For an employer, for instance, to offer such low wages that the employee can only sing the old song, "You load fifteen tons and what d'you get? Another day older and deeper in debt" is for the employer to enslave the employee because the employee *has* to work (and probably has to work for him, or at least for monsters like him). It is to assume that the "floor" beneath which the potential employee simply will not work is the seller-*value* of his work, when in fact it isn't a value at all, but survival, which he has a

right to expect *as a human being*, not as a worker. He works to get himself *above* this zero of humanity and to fulfill his self-set *goals*. So even if he can stay alive, he is dehumanized at this level, and to keep him at this level is morally wrong.

People like Marx, but even more Dickens, showed the moral flaw in economic theory that allowed the dehumanization of the worker; and since employers were not basically harpies who were trying to get their claws into everything, the wages rose so that in the United States today, practically all workers live considerably above the survival level.

But when buyer-value of the service is so small that it is apt to encroach on the level of necessities of the server, *it is only by using the Double Effect that a person can buy a service that only allows the server to meet his needs.* That is, if you can't buy his service without doing some damage to yourself, then you're going to become poor by hiring him (you won't be able to achieve your goals now); and so you can agree with him to take the work on the grounds that it's better to work and meet his necessities than starve. But you can only do this if the damage you are doing to him is less than or equal to the damage that would occur if you didn't hire him—the greater damage of his not finding work and starving, plus the fact that if you paid him more, you would be making yourself poor.

Once again, however, you can't in this situation have set your standard of living so high that for you poverty still exists well up into the level of affluence. You have a right to a decent standard of living; but you have no right to become affluent on the backs of those who have to work for bare necessities to make you so.

And it is the fact that wealthy people can command the services of others, who often are poor, that is what is behind the truth of Jesus's statement, "It is harder for a rich man to enter the Kingdom of Heaven than for a camel to go through the eye of a needle." It is

so easy to exploit the poor without even thinking of it if you are rich, because they seem so eager to serve you and so happy to do so and so grateful that they can live by serving you.

But there is a further consideration here. The level at which necessities cease and values begin is different for different types of people; because some people have the lives of more than one other person dependent on their income. Thus, a man, say, who is supporting a wife and three children must meet the necessities of five people before he has any income that can be used to pursue goals; and hence the seller-value of his service begins at a higher level than one who has fewer dependents. He (and his dependents) would be dehumanized if he were paid what would be a small but not unjust payment for a single person's service. A single woman who has four children is in exactly the same position as the married man with three children; sex has nothing to do with this. A married man whose wife also works and brings in income (supposing this to cause no hardship to any children) obviously meets his necessities below the level at which a single person would be dehumanized; and so his seller-value begins at that lower level. A teen-ager whose parents are still supporting him has no seller-necessities at all, and so any money he earns is above the absolute floor for seller-value.

What does this amount to?

Conclusion 21: Minimum compensation for a service must be above the place where the seller-value actually begins for the person performing the service; but this minimum will be at different levels for different people.

So there are morally wrong wages because they are too low. But you can't determine *one* minimum wage for everyone, because for those who are being supported by others, this is in fact above the

minimum wage, and for those who have dependents, this will dehumanize them. The person offering the wages must discriminate among those receiving them, and not look solely to the buyer-value of the service they perform.

Here again, it is true that a given service in itself is equal to any other service that does the same thing for the person who buys it, irrespective of who performs it. But this is only its *buyer*-value. This can be so low that it is beneath the other person's seller-necessity; in which case it is morally wrong to force him to serve at this level.

Some might object to this that the higher seller-necessity of a man who is married and has three children is due to his own choice, and so (like the person who chooses to starve rather than serve) he deserves no special consideration from those buying his service.

But this overlooks two facts. First, as we will see later, one does not choose to marry in order to pursue one's own goals (in fact, to marry another for the *purpose* of your own fulfillment is immoral); so the choice to marry is of an entirely different order from the choice to buy a car rather than spend a year in college. One is *driven by* nature to marry; and so it is more on the level of a necessity than choice, as can be seen from the fact that it is morally wrong for society to *prevent* people from marrying, except using the Double Effect. The same goes for having children. It is immoral to marry and choose to have no children at all; and not all moral attempts at family planning do in fact result in only the number of children one can reasonably expect to support. The second fact is that, however responsible the person may have been for having these dependents, the fact is he has them, and there is no reason why they "deserve" to be dehumanized because of the sins of his past (if any). No one, as I said in Conclusion 10 of the preceding section, ever "deserves" harm from another.

Hence, there is no justification other than the Double Effect for

paying any person just what will make him meet his necessities; and the actual amount this is will vary from person to person.

But it is also true that the seller-*value* of a service differs from seller to seller. One server's standard of living can only be met with a yearly income of fifty thousand dollars; another's is met at twenty thousand. If you pay both thirty thousand, one of them is rich and the other poor. It is only on the assumption that every person who serves wants an infinite amount of money that you could pay everyone equally and be just. The price for the service *must be negotiated* between the purchaser and provider, so that a compromise can be reached between the two values, consistent with the buyer-value and seller-value that actually exist in each case. To treat all servers equally is to assume that they are puppets who have no personal goals.

And this is why "equal pay for equal work" is simple nonsense. First of all, there is no real meaning to "equal work" even from the buyer's point of view. One server's work is done deftly and cheerfully; another's grudgingly and ineptly, while a third is so absent-minded he has to be supervised constantly. The fact that they are spending the same amount of time at the same job doesn't make them of the same *value* to the buyer of the service, by any means. He doesn't just want the job done; he wants it done with as little inconvenience and hassle to himself as possible, and in an atmosphere of cooperation, not confrontation. So the buyer-value of different persons' services in the same job description is very, very different.<sup>43</sup>

And from the seller's point of view, the same job description is

<sup>&</sup>lt;sup>43</sup>It's odd, but I never hear the advocates of "equal pay for equal work" complain that workers who have been on the job a longer time (even long enough to get jaded at it) don't somehow "deserve" higher wages, in spite of the fact that the job description is still what it always was.

also very different. One person finds the job just what he would pay to do if he were wealthy, and enjoys it. Another is self-supporting, and has few expensive goals in life, and becomes rich with a salary that just barely meets the necessities of another. Their work does *not* have equal seller-value, because each is giving up something entirely different from the other in performing it.

Lately, there has been an attempt to legislate "equal pay for jobs of comparable worth," described by jobs involving equal training and skill levels. These again have vastly different buyer-values, and vastly different seller-values; and the attempt to force one salary upon all can even be dehumanizing to those whose necessities are great enough.

Far better to let the market determine prices when only values are involved, and see to it that it doesn't determine prices only when there is a question of necessities.

But that brings the market into the picture. Now the market establishes (by demand) a kind of aggregate buyer-value that individual sellers can use to establish whether they want to sell that product or service or not; and it also establishes (by supply) a kind of aggregate seller-value that individual buyers can use for the same purpose. Of course in a sense, the market-price is the result of innumerable hagglings; but even when a given buyer is haggling with a given seller, in modern times, at least, there is the known market-price in the background, as a rough guide to what the compromise would be with "most" other people. So it saves time, going from one potential buyer to another until you find the one who will give you the most you can get. The seller tries now (if he is haggling) to sell above the market-price, and the buyer to buy below it; and to the extent that sellers find more buyers, the market-price goes up.

But in general, as I said, with manufacturing, there isn't much

haggling going on; and a guess is made as to what the market price will be of this product at this production level; and if you're lucky, you can produce at full production and sell all your products. If not, you cut back. If you still have people sending in orders, and you're at full production, then you raise prices or make plans to expand.

And so on. I don't want to go into the details of this (if for no other reason than that this section is getting too long) but to see what are the implications in it as a pricing mechanism.

Since it allows for there to be a price marginally below the average buyer-value based on the number of items for sale, and marginally above the average seller-value, it can permit a seller or buyer the choice of whether to sell or buy this item. As such, there is nothing at all wrong with it, *as long as what is at issue is a value*. In fact, prices arbitrarily established by government or any other way are almost bound to be worse, either for buyers or sellers (or sometimes both). There are bound to be people who would want either to buy or sell the item at a different price; but they can either fulfill some other goal, or serve in some other way, and so no damage is done to anyone. *Any* time one price is used for many people, there will be many unsatisfied with having the item for sale at that price; but there is no law that says everyone has to be satisfied. But the point is that the market price is the one that makes the greatest number of both buyers and sellers satisfied.

Even if monopolists get control of supply and therefore of the market price, there is still nothing morally wrong with this, *as long as what is at issue is a value*. Here, there may be a very small supply and a high price (as, for example, with Ferrari automobiles); but nobody needs a Ferrari, and if you don't want to pay for it, you don't have to have it. I know a lot of people who would like very much to have a Ferrari, but don't consider themselves dehumanized in any way because it's out of their reach.

This is the economic flaw in Marxism and all "command" economies. A price fixed by the government will only by accident be the market price; and so people will be unsatisfied by the whim of the government rather than the ability of producers to meet the demand. Further, since producers know that they can't sell their products for anything but the government's price, and that they can sell any of their products for that price, they will produce shoddy merchandise, knowing that it will sell, and that if they produce merchandise of better quality, they will gain nothing by doing so. The manufacturers of eastern Europe are as I write this facing the shock of the fact that they can no longer get away with producing the ghastly products they had been foisting on the people of their countries; because now, with a market economy beginning to appear, people simply will not buy what they produce, because they can get better products cheaper.

But again when necessities are involved, things change. If the market is allowed to determine the price of a buyer-necessity, then, since the demand is inelastic, the price will rise to the level of ability to pay without greater dehumanization, rather than falling to the level at which all those who have a right to whatever it is can get it. And if the market determines a seller-necessity, such as wages, then Marx's analysis is correct: it will fall to starvation levels.

Hence,

# Conclusion 22: The market must be allowed to set prices for values; it cannot morally be used to set prices for necessities.

And this, of course, is the flaw in capitalist economics up to now. It treats everything as a value and justifies setting outrageously high prices for things like health care and legal care, because that is what the market will bear. But the point is that the market will bear an

enormous amount for a necessity, up to the point of bankruptcy; and so the necessities siphon off huge amounts of money from the value-sector of the economy into the pockets of those who consider themselves benefactors of the community all the while they are bleeding it dry.

The solution to the problem does not lie, as I said, in government intervention, but in the recognition by those in these fields that they simply have no right to become rich in their field, though they don't have to live abjectly either. But fields involving necessities are essentially different from fields involving values; and those in these professions are in the business of *alleviating mankind's woes*, not of fulfilling their desires; which makes these professions in themselves that much more noble than anything that supplies a value, however exalted. That's the first point. There is an honor in belonging to these areas of endeavor quite independent of the money that can be made from it.

The honor is all the greater, because it is morally necessary, as I said, not to exploit the alleviation of woes to become super-affluent, however easy it might be and tempting to do so. Hence, people in these areas must be on the watch that the greedy don't enter them simply to gouge the public and make a lot of money. Anyone who does so must be (a) held in contempt by his peers in the profession, and (b) drummed out of it.

Thirdly, these people will have to learn to recognize what income represents. We cannot afford any longer to have income be a sign of social status, as it is in capitalist countries today. The function of income is to allow a person to fulfill his goals, not to give him grounds for looking down his nose at someone else. Hence, the people in the professions involving necessities must assess what their goals in fact are, and realize that they don't need the riches of Croesus to achieve them; they must set reasonably modest goals for

their lives, and make the act of helping people one of the prime fulfillments of themselves as persons, thus not using alleviating suffering as a means toward their own extravagant pleasure.

That is, instead of using "conspicuous consumption," as Thorstein Veblen put it, for establishing social status, we will have to resurrect the kind of attitude that the nobles used to have toward the *nouveau riche*, and think, as a society, that those who simply have a lot of money and spend it are ignorant and to be pitied, rather than shrewd and to be envied. What I am proposing, if you will, is an *aristocracy of service*, in which those who perform necessary services will be honored by the mere fact that they are performing them rather than by how much they can gouge the public by doing so. This isn't really utopian; something like this attitude existed (in principle, at least) for centuries.

And one of the reasons, I am convinced, why there are so many malpractice claims is that patients see doctors fattening themselves on their patients' necessities; and the patients naturally want to get back at them whenever this is possible. They say that while hostages are kept captive, they tend to fawn on their captors, and are actually grateful to them when they lessen their torment; so doctors cannot look to patients' abject gratitude as if the patients are not resentful at having to give up their life savings for the service. Just as hostages' attitudes toward their captors changes after they have tasted freedom for a while, a patient's attitude toward a doctor who has reduced him to poverty is not apt to be very benign once the crisis is in the past.

But if patients see that their doctors are leading only ordinary lives, even if they are comfortable, then they will be more inclined to recognize that mistakes can happen, and that there is no percentage in trying to reduce doctors to poverty because they are human; and they will have real gratitude toward their benefactors; because doctors will then be true benefactors.

So social status will come from the profession itself, not from the income; and people in these professions will still be able to live decently, and will now not have what amounts to an adversarial relationship economically with those they serve so well in other ways.

Don't call me hopelessly naive. In Argentina, where there is no Argentine Medical Association to lobby Congress, and where there is a good supply of doctors, doctors make only a decent income, and work just as hard for it, if not harder, than in the United States. The fact that they don't become rich has not affected the supply of doctors; because the honor in being a doctor and the fact that they are truly helping their patients is compensation enough.

In other words, it is only on the assumption of the Second Great Myth, that everyone is infinitely greedy, that what I am proposing wouldn't work. Let the greedy play baseball for a living; no one has to watch baseball.

One thing the government can do is forbid people in professions involving necessities from banding together in unions to look after their interests, especially to lobby the government in their behalf. It is one thing for the group to defend itself from harm; it is another to lobby to its own advantage; and, as I said, there is a vast difference between lessening one's benefits and being subject to harm—and this distinction is not recognized today, precisely because of the failure to see the difference between values and necessities. Either that, or doctors and lawyers and teachers and so on must see to it that groups like the American Medical Association and the American Education Association do *not* lobby the government for favors for doctors and teachers and do *not* engage in price-fixing. It is interesting to note that deterioration of education began to be severe as teachers' unions began striking and demanding higher pay and better working conditions.

There is a danger here, however, and the teachers' plight illus-

trates it. Before they banded together, teachers were paid miserably, because the public did not *value* education. Precisely. Elementary and secondary education is a necessity, not a value; and therefore, it is something people take for granted, and it simply cannot be compared with things like owning a BMW or having a season ticket to the symphony. It is either infinitely more "valuable," or infinitely less so; and therefore, how much money you are to pay for this service is *not* dependent on how much you think it is worth; it is based on the *seller*-value only.

When sellers are not in a position of power, as teachers weren't, then, as with factory employees, the price drops far below the seller-value. Hence, something must be done to protect providers of necessities so that they are not as a group deprived of a decent living because of their profession. But at the same time, this protection may not morally be used to make them affluent at the expense of the people they are serving.

Can government step in here? Possibly, but only with great circumspection. Obviously, it was the government's stepping in that gave the teachers' unions such enormous power that they now fatten themselves at the expense of their students. The problem is by no means an easy one to solve, nor is it with the medical profession. The answer has something to do with reviving the notion of a *profession* rather than a business; a professional in this sense has a right to a good living (because, as educated, deprivation occurs for him at a higher level than Johnny Six-pack), but no right to an extravagant one.

Well, I think I have made my case as well as I can, so let us push forward.

## Chapter 7

### The entrepreneur and the firm

There are four topics still to discuss dealing with economics: the firm and its relation to the public, the relation between employer and employee (whether in a firm or not), the firm that has employees within it, and finally government's actions in the economic field. I am going to leave the last three of these until the next section (or sections, depending on the length), because all of them involve aspects of the social relationship. Even a person who hires an employee as, say, a servant, has gained authority over his actions; and authority is a characteristic of the social relation, not the economic one. Hence, this chapter on the entrepreneur and the firm in general will be the last of this section.

What I am going to say here will be directed at the firm that is called the "single proprietorship," and also at a firm which has no employees within it; but since this is the simplest case of a firm, what I will be saying here will apply *mutatis mutandis* to more complex firms.

Let me begin with some definitions:

An *entrepreneur* is a person who offers a service or product to the public.

A firm or business is a social entity which offers a service or

7: The entrepreneur and the firm

product to the public.

The *public* is the set of people who might find the service of product of value to them or necessary for them.

#### A consumer or customer is one of the public.

The point in these definitions is that an entrepreneur does not perform his service for one definite person (then he's an employee), but has a service that he *hopes* enough people will be interested in for him to be able to make a living; and so he offers it to that undefined segment of the human race called the "public" that might want or need the service. As I said earlier in discussing sellers, essentially what the entrepreneur is offering is his service, even when he sets himself up in the business of making fancy dolls to sell to people.

Perhaps the first thing to note here is that a firm cannot, strictly speaking, be *owned*. True, when an entrepreneur begins a business, it is his, and it usually *involves* owning or renting things like an office, various types of equipment, perhaps certain materials, and so on; but he doesn't own the business as such, for the simple reason that the business is essentially a *relation* to the public, and you can't own a relation.

And this is recognized. If an entrepreneur sells a business, it is recognized that he not only sells the building, say, the materials, the equipment, and so on, but also the "intangible assets" like "good will," based on how the firm has treated consumers in the past, inducing them to want to patronize it again. This, of course, will change as the new entrepreneur takes charge, if for no other reason than that his personality will make him relate to customers in a different way, altering the reputation of the firm. But it is just this relation between the firm and potential customers that is the very

7: The entrepreneur and the firm

essence of the firm as such: every firm has this, and firms have nothing else in common. When you own something, it is nobody's concern (except their own protection) what you do with it; but with a business, the public is involved and has expectations based on the fact that the firm necessarily relates itself to them.

So we can immediately say this:

# Conclusion 23: Every firm has at least two coordinate purposes: (a) to serve the public and (b) to make money for the entrepreneur. Neither of these is the means toward the other.

That is, firms are *not* simply machines for making money. It may be that the entrepreneur's *motive* for creating the firm is to make money; but this does not mean that it is the sole purpose of the *firm* he creates, because the firm is greater than himself, since it relates him to the public (who, after all, are going to pay him for the service). What the firm is doing from the public's point of view is obviously providing the service, and from their point of view, the entrepreneur's making money is simply the means to induce him to perform the service.

Now since the relation between the entrepreneur and the public is *one* relation, and if you look at the motives from either end, one of what I called the "coordinate purposes" appears as the means toward the other one, then it follows that in the firm as it actually exists, each of these purposes is on the same plane as the other, and neither can be subordinated to the other. The entrepreneur cannot ignore the fact that the public's motive for buying his service is the service itself (or he won't have any customers); and the public cannot ignore that the reason he is in business is to make money, or it enslaves him.

We will see later in discussing firms with employees that the fact that the firm then becomes a society performing the service means

7: The entrepreneur and the firm

that it has another coordinate purpose: that of providing a living for the employees. But for now, it is enough to show that the statement, "The reason people are in business is to make money" is an oversimplification. The *reasons* people are in business are to serve the public and make money *in* the service (not "by means of it").

Given this relation with the public, then, the first thing the entrepreneur must do is let them know that he is offering the service (or product) and what it is that he is offering. He must advertise. And since advertising is a statement, and we have seen that lying is morally wrong, we can say this:

## Conclusion 24: It is morally wrong for a firm to misrepresent the service or product it is offering the consumer.

That, of course, is obvious. To communicate that the product will do something that it won't do, in the hopes that buyers will find a value in it that isn't there and you can make money off this is inconsistent with the function of the firm as serving the consumer.

Note that even if what is said is not literally false, if it communicates what is false, it is false advertising. For instance, to advertise a headache pill as containing "the pain reliever doctors recommend most" gives the impression (and is calculated to give the impression) that it contains something much more potent than just aspirin—though that is what doctors recommend most. Hence, this kind of advertising is a lie. If you say, "But everyone knows that we're talking about aspirin," then why didn't you name it? Because it takes the force out of what you were saying. Precisely.

It is also morally wrong to *conceal* information about dangers or defects which would not be generally known to the public and which would be relevant to a rational decision to buy the product or service. For instance, if you are selling aluminum ladders, a buyer

would not necessarily know how to use them safely and might not advert to the fact that aluminum conducts electricity. Hence, warnings about how not to place the ladder and warnings about not letting it touch electrical wiring are in order. You don't, however, have to assume that the public are a bunch of idiots, and, morally speaking, you don't have to issue explicit warnings dealing with obvious abuse of the product. If somebody wants to use a pair of ladders as a ramp to lift his car with, and it falls on top of him, you are not responsible for his folly.

Government has recognized this aspect of the duty of a firm, and, as is its wont, has passed legislation that goes much too far in protecting irrational consumers from firms' "concealment" of dangers; so the problem nowadays is not so much that firms must not conceal dangers as to how to rein in the government from trying to create by legislation a risk-free society. Government's duty, as we will see, has to stop as soon as real dehumanization is reasonably prevented, not to coddle the citizenry.

A third morally wrong way to advertise is to present something as if it were a necessity when it is only a value: that is, to present something as if using it were avoiding harm, when in fact what it is doing is advancing one toward a goal. To give the impression that you're risking being unhealthy by not eating a given breakfast food or that social ostracism is inevitable unless you smell like a rose is misrepresentation. It works, because people are free to give up goals, but have a moral obligation to have necessities; and so if you can convince them that your product is a necessity, you will find more people buying it. But the fact that it works better doesn't make it right.

A variation on this is very serious: it is to create a situation in which the valuable product *becomes* a necessity. The Nestlé company once sent people dressed as nurses into maternity hospitals in

third-world countries, giving free samples of its infant formula to new mothers—with the result that their milk dried up and they were then forced to buy the formula afterwards. Nestlé has since stopped this, because it was documented that children were dying because mothers couldn't afford to buy a supply of the formula and were watering it down. But irrespective of the damage, it is still essentially a lying way to advertise.

Any attempt to use a threat to induce people to purchase a product or service is morally wrong. In cases involving necessities, of course, the consumer is already under a threat, which means that *it is morally wrong for entrepreneurs to advertise beyond letting the public know what their service is.* 

This is what is really behind the strictures against advertising in the "professions," such as medicine and law. It is "unethical," as they say (i.e. it at least gives the appearance of immorality), not because it is *infra dig*, but because the public (a) needs the service, and (b) needs no more of it than what will correct the dehumanization. Hence, any provider who is competent is "as good as" the greatest expert unless the problem is so complex that the specialist's special services are called for. I find it outrageous that hospitals are spending money advertising even on television (that most expensive of all media) that they have this and that extra helping service for their clientele—evidently with the idea of drumming up business. If there is anything which should be consumer-driven and not supplier-driven, it is the providing of necessities.

But assuming that we are dealing with values, there is nothing wrong with trying to persuade the public to buy the product or service. Many is the person who has not realized that he can be a certain type of person if he chooses this as his goal; and there is absolutely nothing wrong with opening out new vistas in life for people. For example, to show what a writer can do with a computer

and a printer can be a revelation to someone who thought that computers were just fancy typewriters.

That is, you can show the *value* in the product, as long as it is really there. A sports car not only moves a person from place to place, but does so with panache and elegance; and so it *does* enhance his "image." There is nothing morally wrong with pointing this out and portraying the car as adding to a person's personality. The value, remember, is how the object leads to the person's goals, and is something intangible about it; and buyers buy things for their value, not for the material object itself.

Teilhard de Chardin, in *The Divine Milieu*, had a chapter on the spiritual value of the material; and I am in complete agreement with the idea. What material possessions do is enable a person to live a fuller *life*, and it is one's own acts that are the goal. Having possessions becomes materialism when a person succumbs to the temptation of the affluent and has things simply because he has to spend his excess money somehow, as I mentioned earlier. But if he has a purpose for owning material things, this is not crass, it is exalted, and it exalts the material thing into a partnership with spirit. Advertising, properly done, can show how to accomplish this, and when it does it is an extremely noble service to mankind.

Secondly, concealing *irrelevant* information is not morally wrong. In fact, it can be the case that revealing the "warts" of what you have for sale would itself be misinformation, because the consumer might take it that the information makes a difference when it doesn't. For instance, if a house has once had minimal termite damage and this was taken care of (and there is no real harm done and no danger now of termites), then volunteering the information that the house had had termites but that they were treated would be likely to mislead the buyer into thinking that the damage was serious (because otherwise you would have kept quiet about it). That is, buyers

assume that you are putting the best face you can on what you are selling; so if you are "scrupulously honest," then you are actually *communicating* that this is the *best* that can be said of what you are selling, and that therefore there is a lot more bad about it that you aren't mentioning. Obviously, it's tricky to walk the tightrope of letting people know all that is relevant to a rational choice to buy without giving the impression that what is for sale is worse than it is.

As far as goodness and badness are concerned, since they are subjective and one person's evaluation differs from another's insofar as his standards are different, then there is nothing wrong with advertising the product or service as better than the competition. You can't misrepresent it by saying such things. It is rather far-fetched to assume that an entrepreneur *wouldn't* think what he was offering was better at least in some respect than the competition; and everyone knows this, and realizes that if you say that your widget is better, this is from your subjective point of view. Hence, you aren't communicating anything false.

Of course, if you allege facts or studies to prove that your widget is better, then these must not be misrepresentations. I once startled a young neighbor kid who had begun selling vacuum cleaners door-to-door and came to demonstrate his machine to me and my wife. He had me vacuum a small area of rug until I thought it was clean. Then he put some tissue over the intake of his machine and vacuumed over what I had done, showing me the dirty tissue that my machine had missed. Blair the Skeptic then put some tissue over the intake of *my* machine and vacuumed over the area he had just vacuumed after my initial vacuuming—and, just as I suspected, the tissue showed dirt that *both* of us had missed. I advised him to give up working for the company if it was selling using that pitch.

Now then, having advertised his service, does the entrepreneur have to serve anyone who comes to him for it, provided he has the

money? At first glance, it would seem so, because the entrepreneur has offered his service to the public; but he has not by that fact already promised to serve everyone indiscriminately, or he would have to serve those who can't buy his service for as much as he wants.

So there is nothing wrong in itself with a restaurant's refusing to serve people who are not wearing jackets and ties. Assuming that there are other ways in which the tieless can eat, they are not dehumanized by not being able to eat at Delmonico's.

Now of course in that case, they can put on a jacket (especially if they have enough money to eat in these places); but what about those entrepreneurs who don't want to work for Black people? In the case where there is a *de facto* conspiracy to prevent a whole class of people from getting a service of a certain kind, then morally speaking each entrepreneur who refuses the service is saying that people of this type "don't deserve" this kind of service; and that is a falsification of their humanity. Whether he explicitly says this or not is irrelevant; even if he says, "I wish them all well; I just don't like the idea of serving them," the fact is that he is one of a group who together are depriving Blacks, say, of something that others think they have a right to because they belong to the general public, not because of some privileged status they have. Prejudice against a group of people can only be indulged in by isolated individuals; and it must be as possible and convenient for the excluded group to get the same service elsewhere. Obviously, if the service is a necessity, then to the extent that the person you have a prejudice against is going to be harmed without having it from you, then you have an obligation to provide it. My point is that this is also the case when the service is a value and the person can't get it from any other entrepreneur

either.44

Once the customer approaches the entrepreneur, the two agree on (a) what the service is to be, with its conditions; and (b) what the price is to be. As far as price is concerned, everything that I want to say has been said, except for the following definition:

# *Profit* is that part of the price the entrepreneur receives that is beyond compensation for his costs.

There is nothing special about profit except the term; but it has become a dirty word in some circles. Obviously, it is the part of the price that is above the seller-value for the service; and, as I said earlier, it is perfectly moral, when only values are involved, to agree on a price that is extravagantly above the seller value (and which, therefore, involves enormous profit). It is only when necessities enter the picture that the profit from the service must be modest. Some profit is necessary in this case also, or the entrepreneur is the same as a slave; but the profit must not lead to great affluence. We saw all that.

The agreement establishes a *contract*, with each party having rights and obligations. The consumer has the right to the product or service as advertised and agreed on, and the entrepreneur has the right to the money.

<sup>&</sup>lt;sup>44</sup>My wife and I experienced an amusing (or tragic, depending on your point of view) instance of this. Our next-door neighbor (who was Black, but very light-skinned) asked one day if my wife would ask the Black housekeeper who came to clean for us once a week if she would be available to help at a party the neighbor was having the following week. When we asked her, she replied, "Tell me, Mrs. Blair, is she Black?" My wife said, "Yes, why?" She thought for a moment, and then said, "All right, Mrs. Blair, I won't be prejudiced and I'll do it." When my wife, startled, asked what she meant, she answered that most Blacks wouldn't act as housekeepers for other Blacks.

First let us note that there are certain things which have the appearance of contracts and are not contracts. A contract establishes rights against the other party, which create specific moral obligations in him. Thus *the basis of contractual obligations is moral*. The laws about contracts simply reinforce in this life the obligations you have acquired morally.

The essence of a contract, then, is that of a *promise*. The reason breaking a promise is morally wrong (i.e. inconsistent with the nature of the promiser) is that a promise supposes self-determination, when the person agrees that he now *chooses* to change his reality in such a way that the act he agreed on *will in fact be performed by him*. To break the promise is to act as if the choice does not determine your reality, and hence deliberately to break a promise is immoral, involving eternal frustration (and, of course, the legal sanction of a lawsuit).

But since the expectation of the other party that you are going to fulfill your contract is fundamentally an expectation that you are going to act in a morally right way, the following conclusion emerges:

Conclusion 25: Contracts in which one of the parties is to perform a morally wrong act are non-contracts, and laws must be passed to prevent them from being made.

A case in point at the moment is "surrogate mother" contracts, where a woman agrees to be impregnated (usually by artificial insemination, which is itself morally wrong) with the sperm of the husband of the couple who wants a baby but whose wife is sterile, and then to give up the baby to them once he is born.

But the woman is the mother of that child, and the child, as we will see, has a right to be brought up by his biological parents.

Hence, it is morally wrong deliberately to conceive a child who cannot be brought up by his biological parents; and therefore, this "contract," since it involves each party's doing several immoral acts, and since most especially it is a violation of the child's rights, must be declared null and void, and such contracts must not be allowed in law. It doesn't matter if both parties are willing; no one must be allowed to be able to hold another to something that is morally wrong. And since it has happened that women change their mind during pregnancy, realizing what they have done and are doing, and refuse to give up their baby, it is morally wrong to put a woman in this position, even if she at the moment is willing to do the act and sees nothing wrong with it. The same, of course, applies to implantations of in vitro fertilized ova of the wife of the man whose sperm fertilized them into a surrogate. But again several morally wrong things have to be done: Human beings are killed in this process (since more eggs are fertilized than actually "take"); the whole sexual process is now just technological manufacture of a baby; and a woman is not an incubator; her womb is for her child, and is not for rent-not to mention that allowing it puts pressure on poor women to hire themselves out as, as it were, baby-making prostitutes.<sup>45</sup>

But supposing that the contract is a legitimate one, these are the traditional three ways in which the entrepreneur can fail to live up to his part of the bargain:

### Nonfeasance consists in not performing the service agreed on.

<sup>&</sup>lt;sup>45</sup>In order to save the life of an already existing embryo, a woman could agree to have him implanted in her, using the Double Effect, just as a family can adopt a child who has already been born and will suffer without the adoption.

*Malfeasance* consists in performing the agreed-on service badly.

## *Misfeasance* consists in doing something other than what was agreed on.

If a person, for instance, sells a chair to a consumer and then doesn't deliver it as agreed, this is nonfeasance. If he delivers a damaged chair, this is malfeasance; and if he delivers a sofa when a chair was ordered, this is misfeasance. And of course, the point is that you can't just perform any old service to the consumer; you have to do what you agreed to do; and if it is for some reason difficult to do it, then that's just too bad for you.

Therefore, we can say the following:

Conclusion 26: The entrepreneur must morally perform the service, even if for some reason it has become very difficult for him to do so; and the consumer must pay for it, even if it becomes very difficult for him to do so.

The contract does not say, "I will do this for you as long as it is easy to do it," or "I will pay as long as it remains convenient for me to pay." The entrepreneur may have thought it was going to be easy for him to do the job; but circumstances beyond his control—which he didn't foresee at the time—may make it now very difficult to live up to his part of the bargain. Nevertheless, the difficulty does not excuse him. The same goes for the consumer, when financial reverses force him to borrow money to pay his debt to the entrepreneur, for instance.

Of course, in these cases, there is nothing wrong with trying to renegotiate the contract, explaining to the other party what

happened. But if the other party is adamant, one is still bound.

But within reason. In the first place, if circumstances change the nature of what was contracted for, then to hold a person to the original terms of the contract can be wrong because in fact it is absurd. To hold a contractor who is building a house to complete the building when an earthquake has made it dangerous to have a building there would be a case in point.<sup>46</sup>

Secondly, if fulfillment of the contract involves actual dehumanization, then the contract is like one of those non-contracts I spoke of earlier, except that this time, the dehumanization is due to unforeseen circumstances that arose after it was originally made. But contracts are human documents, and suppose that human beings fulfill them; and so one of the parties cannot demand that the other dehumanize himself just because he originally agreed to perform the act or pay the money.

<sup>&</sup>lt;sup>46</sup>Again, a personal experience connected with this. I had engaged Larry, a contractor, to have remodeling work done on the house. Instead of specifying everything in writing beforehand, we would ask him whether he could do this or that, and he agreed to do it on a cost-plus basis, knowing how much we had to spend in total on this project, and giving us a running estimate of cost. By September, all was done, and I asked Larry, "Are we square?" and he agreed that I had paid basically all I needed to pay, though his bills were not all in yet. It turned out that Larry was too optimistic. But it wasn't until March that he sent me a bill for three thousand dollars (which at the time I simply didn't have), because when he'd finally gotten around to making his accounts, it turned out that he should have charged this much more. I called a lawyer, who told me that if he finished the work six months before and gave me no hint I owed anything, legally I was in the clear. On the other hand, I didn't want Larry to lose from what he had done for us, and I had about half of what Larry wanted. So I asked for an itemized list of what this three thousand dollar bill involved, and found that his actual expenses amounted to about what I had available; so I sent him a check for that amount, writing on it that if he endorsed it, he agreed that this was payment in full. He signed it. The point here is that waiting six months before informing the customer that he still owes money is unreasonable business practice.

And this is why bankruptcy is morally legitimate.

# A person or firm is *bankrupt* if he or it is legally permitted to perform only a fraction of his obligations toward others.

The idea here is that he would be significantly dehumanized if he were held to the full contract; and so the government decides what percentage of the contract he may still fulfill without dehumanization, and demands (using its authority based on the relation of cooperation, rather than the economic relation) that the other parties yield that part of what theoretically they have a right to.

This is another instance of the fact that contractual rights are not absolute.

But to say more about firms, I have to get into what the social, cooperative relationship is; and so here is the place to end this chapter and this section.

Section 3 Society

## Chapter 1

#### The necessity of society

s I said in earlier sections of this part, people not only relate to each other with the economic relationship of rights and compensation for services rendered, but there is also the social relationship of laws with their sanctions and cooperation and the "team spirit."

The philosophies of Hobbes and Locke and even Rousseau have masked this relationship by supposing a "state of nature" in which people are totally cut off from each other, or at best in which only the economic relationship exists, and in which the social relationship emerges as an agreement of convenience. I pointed out, however, that this could only happen among adults; but how these people ever got to adulthood on this basis is unexplained. We know, for one thing, from seeing instances of it that Tarzan could not have existed; people who have no human contact until they are around the age of puberty can never afterwards learn to function like human beings. But the very helplessness of children and the enormous demands they make on their parents should have made it obvious, once one casts a glance in their direction, that human beings simply cannot survive without having uncompensated service.<sup>47</sup>

<sup>&</sup>lt;sup>47</sup>To say that because of the services received, the children "owe" their parents is a fallacy. The children did not enter into a contract, and by it freely agree to pay for what they got from their parents; and so if you want to put this in economic terms, it is unjust to demand that they compensate their parents for what they have done. In this economic sense, parents have no *right* to be supported in their old age by their

#### Section 3: Society

Hence, Aristotle was right. Human beings are by nature social animals. They must spend the early part of their lives in the society called the family; and they are driven by their strongest urge to create such a society once they reach adulthood; and this very society has such a strong grip on their nature that it fights and usually overcomes the disruptive tendencies of the very urge that induced its formation in the first place.<sup>48</sup>

It is also the case, of course, that families cannot supply all that children need to develop themselves fully. Parents are very limited

1: The necessity of society

children, as if it were payment for what the parents did when the children were not self-supporting. True, children have an *obligation* to support their parents, because their very existence depends on them; but this obligation is due to the *social* relation, not the economic one. Hence, it does not matter whether what the parents did for the children is "more" than what the children must do for their aged parents, or "less." Parents have the obligation to give their children *all* they need to be able to function as responsible adults, and children have the obligation to provide all that is needed for parents to lead something more than just a barely non-dehumanized life; and this obligation only ceases either at the death of the parents or at the point at which performing the service is as dehumanizing to the children as not having it performed is dehumanizing to the parents. The same applies to what parents "owe" their children.

<sup>&</sup>lt;sup>48</sup>It is this that is undermined by "same sex marriage" and other such arrangements. Marriage is not simply a vehicle for gratifying the sex urge (though it is also that) or something like a contract for sharing an apartment. The sex urge, as we will see, naturally drives two people into a relationship that produces a third, helpless person, who must be cared for; and so it tends beyond itself (i.e. beyond the relationship of the couple) even when the couple for some reason remains childless. *This particular relation* is not complete in childless couples, though some have to put up with its incompleteness. Deliberately to enter into it with the intention that it be less than itself, however, is inconsistent with it, and therefore immoral. And since children need the influence of the two types of parents (study after study shows this), deliberately to deprive them of a parent of one or the other sex is unjust to them, even if some manage or even thrive under this handicap. You have no right deliberately to handicap a human being in hopes that he won't be harmed by it.

## Part Six: Modes of Interaction

creatures, and it is the rare set of parents indeed who have the skills to be able to develop all of the talents Junior has because of the genes they gave him, so that once he is on his own, he can live up to his genetic potential. Hence, the members of the family must reach out of it to other human beings if they are to be able to realize themselves fully.

Conclusion 1: Human beings cannot realize their human potential without society; therefore, society is a human necessity.

1: The necessity of society

### Chapter 2

### The essence of a society

I tollows, therefore, that the basic function of any society is to enable the members to develop some aspect of their humanity which they could not do (or do as easily) without it. And this leads to a second conclusion:

## Conclusion 2: Every society is a system, not a body; it primarily exists for the sake of the members, not the other way round.

The distinction between a system and a body was given in Chapter 2 of Section 2 of the second part. There actually have been people who held that society is a body; for example, Herbert Spencer. It can be fun to play around with the analogy and talk about the roads as the "arteries" and the government as the "brains" and so on; but he took it seriously, not realizing that the analogy is totally awry on the major point: in a body, especially a living body, the parts are created by the whole and exist for the whole to such an extent that (a) the whole is what has the properties, and (b) the individual cells are expendable, not just for the survival, but for the well-being of the whole as such—while in a society, (a) the different societies come into being because of needs and desires of the individuals, (b) the individuals are what behave, and the society's

### Part Six: Modes of Interaction

properties as a whole are insignificant; (c) since the society needs to assume the free choice on the part of its members to cooperate with each other, then it is dependent on the good will of each member, who is in large measure looking to his own interest; and hence, it exists for the members. And finally, (d) since society as a whole does not really do anything in the sense in which a body as a whole acts, the "good of society as a whole" that the members are expected to sacrifice themselves for always amounts in practice to the good of those in government, who of course are members; and when the members being exploited see this, they rebel.

## A *totalitarian society* is a society organized on the premise that the members exist for the society primarily, and the society for the members only accidentally.

This last point indicates why totalitarian societies are always police states. Once people see that the only ones benefitting are the ones in power, then the spirit of cooperation which is the main driving force of any society (its "unifying energy," as it were) vanishes, and the only way the members can be made to follow the laws is by imposing heavier and heavier penalties on them and having a larger and larger police force, especially a secret one, to spy on them to see that they are obeying. In totalitarian societies, most of the energy in the society is used up trying to make the people toe the line; with the result that they do so grudgingly and never go beyond the minimum required by law, and not even the society as a whole prospers. The fact that societies that are not totalitarian function much better than totalitarian societies is just another indication that the society exists for the members, and to make the society itself the be-all of its exist-

ence is contrary to its nature.49

Nevertheless, this does not mean that the members are simply recipients and beneficiaries of the society. Since society is in fact necessary for every human being's existence, it follows that belonging to the society (with all that this entails) is a *real*, though secondary, aspect of each person's human reality. For a person to declare himself, then, independent of society is for him not to recognize that society is an aspect of himself. And since society does involve laws and so on, the refusal to obey them unless one sees personal gain in doing so is, as we will see, a contradiction of this social aspect of one's own reality, and is morally wrong.

Hence,

## Conclusion 3: Every person is to some extent really subordinate to the society.

Since, primarily speaking, the society is subordinate to the members, this subordination of the member to the society is secondary; and what this means in practice, as we will see later, is that no society can by its laws prevent a citizen from doing what he has a right to do, provided he has not freely given up that right upon entering it. It can restrict his *freedom*, (and this is where the

<sup>&</sup>lt;sup>49</sup>Religious orders (as in the Catholic Church) are an exception to this. In them, the vow of obedience binds each member to do whatever the superior (who has the function of the society as a whole in mind) wishes, as long as it is not immoral. In this sense, they are totalitarian. But since obedience is vowed, the least sign of the superior's will is taken by the subject as what God's will is for him; and of course God wills what is to the benefit (in the long run, perhaps only in heaven) of the subject. Since one of any religious society's primary goals is also the "perfection" of the members, it is also the case that even here, the society exists for the members, and not the other way round.

subordination comes in) but it can't violate his *rights*.

Now then, what is it that makes a society a society, as opposed to simply a set of people? It is clear that people who happen to be together in one place, as in the waiting room of an air terminal, do not form a society. They are independent of one another, and the only relation they have with each another is the economic relation of each person's not violating anyone else's rights.

Some have said that what makes the society a society is that everyone in it shares a common goal. But this can't mean that each has the same goal, as can be seen if those waiting board the airplane and take off for Paris. Each passenger on the plane has the goal of getting to Orly Airfield, which is also, and not by accident, the goal of the plane itself. But each passenger has individually an *economic* relation with the crew as serving his personal desire to get to Paris and accepting (directly or indirectly) compensation from him; but the passengers still have no relation *with each other* except the relation of not violating each other's rights.

So whatever a "common goal" is, if it is what makes a set of people a society, it isn't that each person has the same goal. But to approach a little more closely to a society, consider the type of flight I once was on going to the Bahamas. The plane was chartered by the resort to which we were all going, and the crew did little things like hold a lottery and so on to try to establish a feeling of camaraderie; and by the end of the trip, we were chatting and laughing with each other rather than just sitting there in silence seeing to it that our elbows didn't touch. We became a small and temporary community; but that still didn't make us a society.

A *community* is a set of people who have common interests and/or concerns, and share them with each other.

#### Section 3: Society

In a community, people recognize each other as persons in a positive sense rather than just the negative one of possessors of rights which must not be violated; that is, they know that the other people are self-determining and pursuing their own goals, and they become interested in what those goals are and so in who the other person really is. This recognition of the positive side of personality generally comes about because of the fact that the goals and ideals are similar to one's own, and so the other person as such is similar to oneself. One enters, to some extent, into the personality of the other, and lets the other enter into one's own personality—while still, of course, remaining oneself. Communities involve *mutual communication of personhood*.

To put this another way, a community establishes a "we," which is a plural "I." I am not "by myself" any more when I am in a community; I have expanded, in some sense, into the others, because "we" share the same values and goals, and to the extent that these are the same, we are the same as self-determining, or as persons. Thus, I see the others as variations on my basic idea of myself, and they see me as a variation on what it means to be themselves. I am now greater than simply myself, and all these other people enhance in some way my own personhood.

Note that the easiest way to establish a community of sorts is to agree on who "they" are. If I criticize someone and you nod your head, the fact that we both *dis*like this kind of person implies in a negative way that we share the same values, and hence are together. This is obviously a cheap way of establishing community, because it involves no real communication of my own aspirations for myself, but simply that I have standards that others don't measure up to, as I mentioned in the section on goals and values in Chapter 2 of Section 7 of the fourth part. It is also an ineffective way of establishing community, since the person I am talking to is bound to

wonder whether I have other standards that enable *him* to be despised and excluded from another "we" I form that makes him in this respect part of "them."

Conclusion 4: Communities based solely on shared disapproval of certain kinds of conduct or shared dislike of certain kinds of people are perversions of communities, and are morally wrong.

This does not mean that communities have to include everybody. The point of a community is that the members have a common interest and common aspirations, and that they support each other by communicating their approval of the goals and encouraging one another. If others do not share the interests, then they are not part of the community (by definition); but they are not necessarily excluded. If they should happen to develop an interest in what binds the community together, they would be welcome.<sup>50</sup>

It also follows that, since what is called "communion," the sharing of the Master's

<sup>&</sup>lt;sup>50</sup>In this respect, the Christian churches are really communities rather than societies. In fact, though the Greek word *ekklesia*, a "calling out," was used for the election of members to the legislative assembly, as the early Christians used it it meant the people in a given place who were "chosen" by God to share the common life of the Holy Spirit. Hence, they were a community in the sense I defined it—and certainly in the earliest days did not form much of a society, since they had no organized structure and no expectations of each other. Basically, these expectations of certain behavior *for each other* don't still exist; what makes a church is the shared beliefs.

But since this is so, it follows that one who does not share the beliefs of the community is *co ipso* not a member of the community; he is *anathema*, a word which the Greek dictionaries give as a "curse," and is usually translated "is accursed"; but the verb it is taken from also means "to change the position of," which obviously fits the context better. That is, a person who does not share the beliefs of the community is not necessarily going to hell, but is to be regarded as one who has put himself outside the community, as no longer a member of it.

#### Section 3: Society

But communities are still not societies, because the people don't have what sociologists call "patterned behavior," which we will be exploring; but what it amounts to is expectations of what others are going to *do*. Every society is to some extent a community, but not every community is a society (or a "group" in the sociological sense).

To illustrate the difference, consider now not a plane ride, but a car pool. This consists, let us say, in four people who drive from their house to work every day in one car; but all through the first week, Jones goes around and picks everyone up and drives them all, and in the second week Smith does it, and so on. Here we have a "getting to work and back" society, whether or not they have any particular shared concerns except the goal each has of getting to work as cheaply and with as little inconvenience as possible.

What makes it a society is that they are *cooperating* to see that this is accomplished. And if we look at what the member is doing when he cooperates, we can see what this means. Clearly, the main cooperation is being exhibited by the one who happens to do the driving this week; during this week, the others are only cooperating to the extent that they are ready to be picked up when he gets there and ready when he comes to take them back home. Certainly, they would regard someone who makes them wait ten or fifteen minutes before he's ready as not being cooperative; but they would think that the driver was not cooperating if he decided not to bother picking them up one day.

But this is interesting in that the driver is not doing something that is in his own interest this week. He has to go out of his way to

bread, is supposed to be a sign of the sharing of the life that all believe in, it is contradictory for one who is not in communion to share the symbol of communion. Again, this implies no condemnation of the excommunicated person, but simply is a recognition of the fact that he is not really a member of the community any longer. Facts are facts.

each of the other houses and wait for them to come and only then drive to work. It would obviously be much more to his advantage this week (since no one else is going to drive him, because it's his week) simply to drive straight to work and then come back home at his own convenience. And the others are cooperating by being ready, not when it suits them, but when it suits the driver to arrive at their door.

Hence, *when* a person is engaged in cooperative behavior, the essence of what he is doing is *acting for others' sake rather than his own*. Of course, in the long run, the driver gets driven three weeks out of four, and so as far as the nuisance of driving to work is concerned, he is much better off than if he drove himself all the time; and even the inconvenience of being ready at seven forty instead of the eight o'clock he could wait till if he drove himself is more than offset by the fact that he isn't the one who's going to be fighting traffic for three out of the four weeks. So in the long run, he is better off for being in the car pool (according to his value system—because if he weren't, he in general would not choose to get into one).

But this doesn't alter the fact that during his week, he is worse off (according to that same standard he has of getting to work conveniently) than he would be if he weren't in the group at all; and it is this that makes the act cooperation.

Note that if the driver just wanted to drive the other people to work, because he wanted *them* to get to work conveniently, and so he volunteered to drive all of them all the time, then his act would no longer be one of *cooperation*, but of *love* (freely chosen uncompensated service, as we saw in the preceding section), and there wouldn't be any society, precisely because *each* other person would be nothing but the beneficiary of the driver's efforts, and they would not be "helping each other," as cooperation seems obviously to imply. But the driver would be cooperating even if his actual

motive when he drove the others was the benefit of the others and not because of the three weeks in which he benefitted from the arrangement and allowed them to take turns driving him without particularly preferring this.

So an act of cooperation may or may not be explicitly an act of love. If you are looking to your own long-term benefit, then it is not an act of love, because you see that the setback you are now taking will be made up for later, and you personally will be the gainer. It is an act of love only when you would perform the act even if there were no long-term gain in it for you. But in either case, the act is an act of cooperation as long as *each* member of the group does something at some time that *in fact* benefits the other members more than himself. In this sense, sociology is not interested in the *motive* for the act, but in the *act itself*, and who in fact it benefits.

But there is something more to cooperation than this. The car pool would collapse in short order if each person agreed to drive the others "sometimes," and get driven by the others the rest of the time. In that case, each one would be sitting around wondering who was going to pick the people up today or whether he should do it; and there would be days when no one happened to feel generous, and each would have to drive himself and be late. In order for there to be even such a simple cooperative endeavor such as a car pool *each member must know when and under what conditions the other members are going to engage in the cooperative act, and when and under what conditions the others expect him to perform his cooperative act.* 

Another way of saying this is that the cooperative act on the part of each member must be *predictable*. This is what the "patterning" of "patterned behavior" mainly consists in. Thus, we can finally make a definition:

Cooperation is the fact that each member of a society does

something that benefits the other members more than himself, and does so in such a way that what he does is predictable by the other members.

When people engage in cooperative conduct, then, they conform to the *expectations* of the other members of the society, and do something which is not in their own (at least short-run) interest because they are expected to do it by the other members.

## Conclusion 5: No society can exist without cooperative conduct on the part of the members.

The reason, of course, is that if there isn't cooperative conduct, then by definition the collection of people is not a society, but a community or something else.

Now since the people are cooperating, then they have to agree on what this cooperative conduct is *for*. The cooperative conduct is *systematic*, (which is another way of saying "patterned" or "predictable"), not haphazard the way acts of love tend to be; and insofar as it is systematic it is rational; and insofar as it is rational behavior, then it has a goal.

# The *common goal* of a society is the purpose for which the members are cooperating.

This is, of course, why the people in the airplane didn't have a common goal. Each had the same goal as the others, but no one inconvenienced himself for the sake of getting everyone there. Note that the *crew* forms a society, however, because each has certain behavior that is expected of him at definite times; and this is all for the common goal of getting the passengers to the destination safely

and happily. Even in the case where there is established a community among the passengers, the crew is still a society and the passengers aren't part of it. Similarly in something like a college, the faculty and staff are the society, who are cooperating to educate the students; but the faculty, staff, and student body (it is hoped) form a community.

Note that what the common goal is is the main distinguishing factor between one society and another. Clearly, societies which have the same common goal can differ from each other in terms of organizational structure and even more in just what type of cooperative conduct is expected of the members; but in a sense, these are not as significant in distinguishing between societies as the fact that in one society, the members are cooperating to educate people and in another, they are cooperating to get people from Point A to Point B. It is also true that in general what the common goal is will tend to dictate in large measure what cooperative acts are needed to attain the goal; and this in turn will dictate much about the organizational structure of the society. Still,

# Conclusion 6: Every society has a common goal toward which the members cooperate.

Traditionally, every society was said also to have a "common good," which was the welfare or benefit of the members of the society. The idea was that the person in authority was to be a wise person who knew better than an individual member what was good for that member, and who therefore (consistent with the common goal of the society) commanded all the members to do what was in their best interest.

But that supposes that there *is* such a thing as the "objective good" for a person, which implies that someone else can know this better than the person himself; and I have argued against this

position repeatedly, from Chapter 10 of Section 5 of the first part onward. Further, this position historically was developed before the self-determining nature of the individual was thought through in all its implications, as I indicated in Chapter 2 of Section 1 of this part in discussing the history of rights.

Hence, with the advance in what we know about persons nowadays, the definition of "common good" must be changed:

# The *common good* of a society is the rights of the members which have not been freely given up upon entering the society.

Thus, the people in the society are assumed to be *self*-determining, and so must be let alone except insofar as they are cooperating for the common goal; and this means that they have all their rights intact. The society must then respect their self-determining nature and not try to do "what is best" for them as if they were children. *They* and their individual goals are what are primary even in the society; the society is supposed to be a help to them, not a master which has them on its leash, however benevolent the master might be.

It would be well to remember this negative sense in which the "common good" must be taken, because it is very easy to slip back into thinking of it positively. But I will tend to remind you of this when there would be an occasion for your falling into that temptation.

### A couple of definitions:

The *role* a member has in a society is the cooperative action he is expected to perform by the other members.

The *status* in a society is the position in the society that has a definite role attached to it, irrespective of who in fact is in that position.

The role, therefore, is not really something that Jones does; it is more abstract: some action that promotes the common goal that *someone* must do; and the status is the "slot" that needs to be filled to get the task performed, or the "assignment" to that role as such. When someone is assigned to perform that role, then he is automatically in that status. Thus, as we will see, somebody has to assign the different tasks to different members; and this must be someone everyone can recognize. Therefore, there is a status of "role assigner" (authority), and the one assigned to play that role has the status of being in authority.

### Chapter 3

#### Laws and sanctions

Note that he happens to be feeling generous at the time, or (b) the fact that he will at the time be aware enough of his long-term advantage.

If society were based on love, then of course the generous impulses of the members would be enough, because if all the members loved each other (i.e. were willing to subordinate themselves to the others), then when one member didn't feel like doing something, (a) no one would mind, and (b) someone else who happened to feel generous would take over the task this time. Such a society is theoretically possible, but it would be very haphazard and unstructured, depending on consensus on what is to get done, and then simply hoping that the tasks will be carried out; and because consensus would be required for defining the tasks, then tasks which would be beneficial and even necessary for the members, given their common goal, but which not everyone agreed on, might very well not get done.

#### Section 3: Society

In fact, there have been any number of attempts over the centuries to establish societies (other than marriage, which I will discuss shortly) like this, but they don't really last long, because necessary tasks in fact don't get done, and even those tasks which do get accomplished increasingly fall on that very small segment of the society which is either unreservedly generous or so meek that they can't refuse hints. These people, who become outrageously exploited by the others, either quit or (as I saw once myself) go crazy; and the society falls apart.<sup>51</sup>

The supposition here is that the Holy Spirit is seeing to it that the facts about Jesus' life and teaching will not be distorted by subsequent generations' interpretations of those facts. But this supervision, as it were, does not consist in the Spirit's *dictating* to his present-day emissaries what is to be done or held to be facts, but in *preventing* the

<sup>&</sup>lt;sup>51</sup>Interestingly, the best instance of a lasting society which is based ultimately on consensus is the Catholic Church. This society as a society consists in the successors to the Master's Twelve Emissaries (the Bishops) and their delegates (the presbyters [i.e. "elders"], commonly called the priests in Catholicism). The rest of the Christians (the "faithful") are the community served by this society. The common goal of the society is twofold: (a) to preserve intact the facts about Jesus' life and teaching, and (b) to try to extend the life of faith to those who don't have it and deepen in in those who do.

In the early community, the Emissaries reached a consensus as to what was to be done, including the appointment (by lot, at first) of new Emissaries. But very early on, Simon the Rock was recognized (by the circumstances under which Jesus gave him the name) as having a special position among the Emissaries, though not as having the power to command (Paul—who says he was appointed Emissary by Jesus himself, not the others—even chided him for acting inconsistently with Christian principles).

As time went on, the present structure emerged, in which the presbyters are subordinate to and under the command of the bishops; but the bishops are not under the command of anyone (except God, of course), and perform their tasks of preserving and spreading the faith by consensus, in what are called "ecumenical councils." The Pope's role in the Church is not that of dictating what the faith is or how it is to be spread, but *the guarantor of the consensus*, under the guidance of the Holy Spirit, so that (a) what the consensus is in more or less ordinary matters doesn't need the convening of the bishops from all over the world, and (b) the Pope is the one through whose voice the consensus reached in the councils is articulated.

There is, however, one society that functions on the basis of love alone: marriage; but that is because (a) it is between only two people, (b) there is a very strong bonding force in the sexual attraction and the resulting children, and (c) they already love each other before they form the society, and so either is willing to be exploited by the other from the start. But we will see more of this when we consider marriage; I just mention it here to dispel the notion that societies with no laws can't exist at all, and to indicate to the utopians that any complex society that didn't have laws and sanctions would in effect be a marriage among all the members. If you think that that would work, you are utopian indeed.

So we can take it that in any ordinary society, there must be some way to motivate the members to perform the tasks that are their assigned roles in the society. (There must be some way to assign the

In any case, the reason "government by consensus" works and has lasted in the Church is that the Holy Spirit is taking a definite hand in it.

human deliberations of the council, or the statements of the Pope, from contradicting the original facts. Thus, councils can decide what they want, positively speaking, dealing with Church teaching; but by the intervention of the Spirit, they will simply not be able to arrive at a consensus if what they are driving at is in fact false; whatever consensus they do arrive at will have at least one interpretation that is consistent with the original data left by Jesus. Similarly, the Pope cannot "decide" what is to be taught or done (certainly not for the other bishops); but when he makes his pronouncements about the faith or morals, sometimes (when he speaks declaring formally that this must be believed), he is simply rendered incapable of saying something that is not true; and this carries over to a lesser extent when he makes any public pronouncement about such matters, because otherwise it would be impossible for the faithful to know what the facts really are. Hence, in the non-infallible teachings of the Popes, in any dispute between the Pope and any group of Theologians, however large and prestigious, the Pope's statement is always the better evidence (because even the "consensus" of Theologians is simply an agreement among scholars, and has no guarantee of its being consistent with the facts, any more than the fact that it was once the consensus of scientists that gravity was a force and that atoms were unsplittable guaranteed that these were facts).

roles to definite people too, of course, but we'll take that up next.)

We can assume that the people are basically willing to carry out the tasks assigned them, and so most of the time, they will be carried out as expected. The problem comes in the fact that "most of the time" is not enough; they have to be carried out practically all the time, or the society is more nuisance than help to the members, because they can't count on things getting done for them. Imagine what would happen in a car pool if all you knew is that "most of the time" the assigned person would be by to pick you up. You might be willing to put up with not being picked up once or twice in the course of a year; but if it began to happen once a month, you'd say, "To hell with it; I'll drive myself and keep from getting an ulcer."

How then does the society guarantee that, with rare exceptions, each member will do something that is to his short-term disadvantage? Obviously, by creating a situation in which it *becomes* to his short-term advantage to do it.

But rewarding each member sufficiently to offset the short-term disadvantage in carrying out his role would bankrupt the society in short order; and so that way is out. (Besides, that's the economic relation, not the cooperative one. In effect, each week the person assigned would be hiring himself out as a paid chauffeur for the others.)

The only alternative, then, is to create a situation in which it is *more disadvantageous not* to perform the assigned task than to perform it. This will work, because (a) this penalty will not have to be applied most of the time, because people will spontaneously do what they are expected most of the time, whereas the reward would have to be given for each act; (b) because the threat of greater short-term disadvantage will tend to deter all but the most irrational shirkings of societal duty, which means that the task will be performed "practically all" the time and can be counted on by the

244

members; and (c) since it will now only be very rare that shirking will occur, the expense of carrying out the threat will be minimal to the society.

A *sanction* is a threat of punishment attached to an assigned task in a society, making it more disadvantageous not to perform the task than to perform it.

*Punishment* is some harm that the society will do to the person if he does not perform the task assigned.

A *Command* is an assignment, with a sanction attached, of a task to be performed.

A *law* is an assignment, with a sanction attached, of a role to a certain status in the society.

Authority is the status in society which has the right to issue commands and laws.

To obey is to perform a task commanded.

Traditionally, the term "sanction" is applied to both rewards and punishments; but since sanctions are supposed to motivate the people in a society to obey the laws, they must in practice be threats. Note that the whole theory of laws and their punishments was developed before the economic relationship came to light with Locke; and as I see it, rewards belong to the economic and not to the social relationship.

Note also that "to sanction" something sometimes means "to give tacit approval" to it. This is *not* the sense intended here. Rather

than "sanctioning" an act, because it has this different meaning, it is better to speak about "imposing a sanction" on the act—which doesn't suffer from the ambiguity.

Commands differ from bare threats because they occur within the context of a society, where it is presumed, as I said, that the person commanded is basically willing to obey, and needs the extra help of the sanction to get him over the times when his short-term interest would be apt to be too much for him. Whenever a command or a law is issued, it is always hoped that the punishment will never have to be carried out, and the threat of doing so will be enough to ensure that everyone obeys.

Laws are simply commands that attach to a given status in the society, and so apply to anyone in that status. For instance, laws against murder and so on apply to anyone in the status of citizen; laws dealing with driving a car apply to anyone who has the status of a driver; and so on. St. Thomas' definition of law, "an ordering of reason for the common good promulgated by the one who has the care of the community," is something that I would have certain minor problems with.

In the first place, as I said, the self-determining nature of people precludes giving "common good" the positive sense it had in medieval times, where it was decided by those in authority what was "good for" the members, who then proceeded to command the members to do it. Secondly, I make a distinction between the society and the community. When the two are separate, as in a college, the authority cannot issue any laws to the members outside the smaller segment which is the society other than regulations which prevent violations of rights. Other "regulations" such as arrangement of how to pay tuition and so on are really contractual arrangements between the college and each person who hires its services. Thirdly, the notion of "promulgation" (making the law known) is in the definition of law

here, because it is assumed to be an "ordering of reason," in the sense that the authority and the member are to "become of one mind" with respect to the common good, and of course the idea of the common good has to get from the authority's mind to that of the member. I think it is a little simpler, now that we have the sociological concepts of status and role, and now that Locke has made his contribution to social thought, to define laws as I did above.

As to the definition of obedience, you *obey* a command or a law when you do what you are told whether you do so because you are afraid of incurring the sanction or not; once again, we are taking the sociological point of view which concerns itself with the act itself and not the motivation for the act.

But I want to point out that, subjectively speaking, you are *free* of the command or law as a command if you would perform the act even if it were not commanded. You would also be free of it if you were in a state where you were indifferent to the sanction; but in this latter state, you would be either ignorant or immoral, because it is some *harm* to yourself, by which you are worse off than you are now; and while the harm may not be great, you would, in choosing the act, choose your own detriment.

But if you are in the car pool for the reason I mentioned above, that you care for the others enough to actively *want* to drive them to work, then when you are assigned the task of driving them, you then willingly and even joyfully obey without having the threat of being kicked out of the pool even enter your head. Hence, the command is not a command, for you; it is more on the order of permission to do what you would like to do.

Even a person like this, however, occasionally uses the sanction to motivate himself to do what he basically wants to do. And this is the proper attitude of the member of society, because that, basically, is what the sanction is for: to be a help for the willing rather than a

threat for the recalcitrant. There is no need to obey grudgingly and to grumble at sanctions; and the person who focuses on sanctions is only looking at the short term rather than the long-term gain he has in belonging to the society.<sup>52</sup>

I don't think it's really useful to call the moral obligation a "law." The idea of it, as the "natural law," was that God was "promulgating" what he wanted us to do through our nature; and he had heaven and hell as a sanction to motivate obedience (remember, at that time, rewards were considered sanctions). But the eternal consequences of the act are simply the natural consequences of it (or rather, the act itself with its goal carried into eternal consciousness), and are not really a threat *attached* to it. This concept of God's "issuing a law" for us and threatening punishment falsifies the relationship between God and his creatures; he's not going to become angry and spank us if we disobey his laws; he is simply

<sup>&</sup>lt;sup>52</sup>The reason the Christian is not, as Paul says in *Galatians* and *First Corinthians*, bound by any law is that, insofar as he has the Christian attitude of Jesus, who "emptied himself and became obedient, even to death on a cross" and a lack of focus on himself, then (a) no sanction can really touch him, because he doesn't care what happens to him as long as he is doing what his Beloved wishes, and (b) he will obey all laws gladly, and would do so even if they had no sanction attached to them, because he is interested in doing what is best rather than seeking his own gain. The point is that he is no longer under the constraint of the law.

The specifically Christian commandment (Jesus's command at the Last Supper, according to John: "You are to love each other in the same way I have loved you") is a commandment in the sense that it tells people what to do; but it does not have a punishment attached to it to motivate obedience. It couldn't have, because to the extent that you would be motivated by your own greater disadvantage if you didn't love as Jesus loved, you would be "loving as Jesus loved" for a selfish reason, and Jesus's love is absolutely unselfish. So this particular command is to be freely obeyed. Paradoxically, disobedience has a natural effect of cutting you off, once you die, from those you don't love; and so to the extent that you don't love, you isolate yourself for eternity, as I implied in Chapter 4 of Section 4 of the third part.

warning us that if we seek our own frustration, we will find it.

The idea of a "law" of nature is derived from the concept of law, as the Scholastics said, by the fact that when laws are issued, those in the status in question do the same thing; and when natural objects act in a constant way, objects of a given type are doing the same thing, just as if they were obeying a law. Personally, I think that the analogy is pretty strained and not intellectually terribly meaningful; but since the "laws" of physics and so on are so entrenched in our vocabulary, there's no point in trying to fight it pedantically by trying to substitute some such term as "constancies."

Now then, what characteristics does a sanction have in order to be able to do its job of motivating people to obey when they are inclined not to?

First, it must be *sufficient*, though just barely so. That is, the disadvantage from disobeying must be seen by "the ordinary person" to be greater than the disadvantage from obeying. Since disadvantages are "badnesses," however, and badness depends on freely chosen standards, as I said in Chapter 10 of Section 5 of the first part, among other places, the sanction will necessarily appear as more or less of a disadvantage to different people.

From this it follows that the sanction must be such that "practically all" the people in the status in question will in fact see it as a disadvantage—or, obviously, they will find it more disadvantageous to obey, and the law will not be obeyed "practically all the time." Hence, society must experiment to see how light it can make the punishment and still have all the people obeying the law practically all the time; and if the disobedience becomes widespread, this can be an indication that the sanction was not severe enough.

If the sanction is too light, of course, only the form of law exists; the law itself doesn't have any real existence. In Cincinnati some twenty years ago, there was a law saying all retail stores except things

### Section 3: Society

like drugstores had to close on Sunday; but one year one of the department stores opened on Sunday during the Christmas season. It was charged and fined, of course; but it did such huge business that it just stayed open, merrily paying the meager fine; and of course, the other stores found that they couldn't afford not to open too, or they would lose too much of their business to this criminal competitor. Within two years, the nonexistent "law" was repealed.

But the reason the sanction must be *barely* sufficient to insure obedience is that the only way sanctions can be morally enforced is, as I will say shortly, by using the Principle of the Double Effect; and if the sanction is more severe than necessary, the fifth rule is violated. Obviously, it's going to be tricky to find the punishment that is severe enough and yet not unjust.

The second requisite of the sanction is that it be *appropriate*, in the sense that it punishes non-performance of just what was commanded. It's hard to give a perfectly accurate term to this second characteristic, because every term seems to have other possible meanings that don't quite fit. The Scholastic term for it is "just," which makes it sound as if it is saying that the sanction must not be excessive; but of course sanctions will work if they are excessive, while they won't work if you tell somebody to do something and punish him for not doing something else.

The idea behind this second requisite is that there shouldn't be "loopholes" by which you can avoid doing what you are commanded and get away with it. To give an example, if there is a law that you have to get your car inspected and have an inspection sticker on it, but everyone knows that the only place where the police check inspection stickers is in the downtown area, then what is being commanded *sub rosa* is to stay away from downtown. In spite of the fact that the members are basically willing to obey the law, they aren't eager to do more than they have to do (because they're

basically free individuals, not slaves of the society); and so all you can expect is that they'll do the minimum that will circumvent the punishment, not that they'll stick even to the clear intent of the law. So a misplaced sanction defeats the law.

Thirdly—and this is not in the traditional Scholastic notion of sanction explicitly, but I think it is important enough to be made a special characteristic—the sanction must be *inevitable*. That is "practically all the time" you violate the law, you can count on being caught and paying the penalty. To the extent that the sanction doesn't follow the law a significant percentage of the time, to that extent it loses sufficiency (which is why the Scholastics didn't make it a special characteristic), because the odds against your being punished get higher, and the advantage of disobeying greater. As an example of this, notice how people slow down when they see a police car beside the highway. Very many law-abiding citizens travel a few miles above the speed limit, knowing that they are not really driving dangerously, and the police are looking for those going more than ten miles an hour too fast.

When laws are not enforced, in fact, they do not function as laws. As I wrote the original version of this, the silly 55 mile an hour speed limit was lifted from the interstate highways (built for 70 miles an hour) in Ohio, outside city areas—and most people stay pretty close to the new 65 mile an hour limit. But the law in Massachusetts was still 55; and they prided themselves on it, and on the severe fines for violating it. But in those years, in visiting my family, I found that I had to drive 65 in the right (slow) lane, because otherwise I was holding up traffic; and I was frequently passed by police cars which weren't chasing anyone, but just going the "normal" speed. Query: Which state had the law?

In cases where a given law has not been enforced for a considerable time (a matter of several years), and has therefore been

ignored, the law is said to "fall into desuetude," and no longer *can* legally be enforced. What is behind this legal concept of "desuetude" is that, since people are basically self-determining, then their freedom to act is not to be restricted without necessity; and if the society has gotten by without trying to see that the law was obeyed for a number of years, then there is no reason to impose it on the people any longer. There are, then, "laws" on the books in most places that have no force as law. These have the name of law, but lack the reality; and it would be morally wrong to try to use them against a "violator" even in those countries where it might be legal to do so (i.e. in those countries which make no provision for laws falling into desuetude).

I might remark here that a law doesn't fall into desuetude if there have been unsuccessful *attempts* to enforce it, even if those attempts are half-hearted. The Massachusetts speed laws were still valid laws at the time I wrote this, because every now and then there was a crackdown. They are *bad* laws, because at the times when the authorities are looking the other way, you can get away with breaking them; but they are still laws.

Similarly with property rights. If you have a corner lot, and people cut across it, and you make no attempt for years to stop them, then the path across your lot can become a public thoroughfare, and you might find that you can't fence your lot in. If, however, you complain periodically about the trespass, then you retain your property rights. This also works with nations. Argentina still claims rights to the Malvinas Islands (Falklands to you) which were seized by England decades ago; but Argentina has kept complaining right up to the present about the seizure, and so the islands have not (morally speaking) passed into England's hands.

But to return to sanctions, in general a lesser sanction that is more inevitable has a greater motivating force than a severer sanction that is less likely to be imposed. If people play the lottery thinking that

they "just might" win, think of how prone they will be to break laws that they've seen other people break and get away with.

It can also be said that *capricious* enforcement of laws is unjust. If the punishment is carried out sometimes and not at other times, the member of the society doesn't connect the sanction with the violation of the law, but with the state of mind of the enforcer at the moment. For instance, if a coach suspends one of his players for not showing up at practice, and then ignores several others, and then suspends a fifth, the players are going to think that the ones who were suspended were suspended because they were Black, or because the coach had a headache, not because they broke the rule. In that sense, "mercy" or "clemency" except either (a) in very rare instances, or (b) in cases where it is clear to everyone what the extenuating circumstances are, is not perceived as mercy but as favoritism; and this tends to destroy the force of the law, which is directed at everyone in the status.

A few more words about laws before we get into how punishment can morally be carried out.

Since the society exists for the sake of the members and not the other way round, and since the members are basically self-determining beings, who have their own lives to live, but are willing to cooperate for the common goal of the society; and finally since laws with their sanctions restrict people's freedom, it follows that

Conclusion 7: Every society must try to have the fewest possible laws: only those *necessary* to achieve its common goal.

When laws proliferate, the people's freedoms are unnecessarily restricted; and since the laws add sanctions to the simple assignment of a duty, this means that the members are threatened with harm if

they don't obey. Hence, if the authorities issue laws which are simply "nice," even if they are related to the common goal (i.e. laws which will aid in accomplishing the goal, but are not necessary for it), then they are acting as if the be-all and end-all of the members is the common goal of the society, not their own individual goals first and foremost.

This is often something hard to see by the organizers of a society; since they very often have as one of their primary personal goals whatever it is that they get others around them to cooperate for, and since (because it *is* their own personal goal) they knock themselves out for the common goal, they don't understand that, while others members may be *willing* to work for this goal, it is not, and doesn't have to be, the highest priority in the scheme of their lives. So the gung-ho leaders of the society start passing laws to make the drones do some *work* around here, and get this show on the *road*, and all that sort of thing.

But that is a totalitarian notion, and in effect makes slaves of the members of the society—and discontented slaves at that. Members who join societies and find that the least little thing they do is regulated tend to un-join themselves very quickly. In the gym where I work out, there was a person in charge of the weight room who was passionate about weight lifting and "his" room; so we found that we were not to have our bags in the room while we worked out, we had to bring towels to lay on the vinyl of the Nautilus machines not to sweat them up, we had to bring in a little card that he took and filed as we worked out (in full sight of him), we had to sign a little paper every time we worked out that the gym wasn't responsible for muscles we tore, and so on. "His" room was neat after a while—because it was increasingly empty. He no longer is in charge of it.

Of course, laws that have no relation to the common goal of the

society and no relation to seeing to it that other members' rights are not violated, are laws in name but not in fact. Any attempt to enforce them is unjust, because the members agree to cooperate for the common goal, not for any other reason.

## Conclusion 8: Laws unrelated to the common goal are laws in name only, and in general should not be obeyed. They may be obeyed when the Double Effect applies.<sup>53</sup>

The reason these laws should not be obeyed is, of course, that they contradict the basis of the society's having the power to issue laws in the first place. It is then making laws simply because it has the means of forcing people to do what it wants; and this is coercion, as I defined it in Chapter 5 of Section 1 of this part, and is not consistent with the society as a whole. That is, since people have the right to live their lives as self-determining, not as determined by other people, then this is a violation of the rights of the members, and as such must, if possible, be prevented from happening.

But it can easily be that disobeying such a law is only going to bring its punishment on you, without anything happening except that you have stood up for principle. Thus, if there is no hope of changing the law by the disobedience, and if all that is going to happen is the harm from the punishment, then you may use the Double Effect and obey.

Two more remarks before we get into the morality of punishment. First, a law must be *promulgated* in order to be a law.

<sup>&</sup>lt;sup>53</sup>Of course, laws unrelated to the common goal but which enforce the common good must be obeyed, because not to do so violates some right of at least some members.

*Promulgation* is a formal act making it possible for the people to understand (a) what they must do, and (b) that they must do it.

Obviously, if the society wants the members (or the members of a given status) to do something, it has to let them know—and it has to let them know in such a way that they know that this is a command and not just a "wouldn't it be nice if" sort of statement on the part of the people who are in charge of making laws.

The primary requisite of promulgation is that it be *unambiguous*. One of the reasons that legal language is so hard to understand, interestingly enough, is precisely this requirement. Since the law is telling people what they have to do "or else," then the people, as I said, have a right to do the minimum required of them; and so they can do anything that the law doesn't forbid them to do. But this means that you have to spell out very *exactly* (even at the expense of clarity) what you want them to do.

Thus, for instance, if you don't want people defacing roadside rest areas, then you can't simply say, "Don't deface this property," because some graffiti artist is apt to come along with his spray can and say, "I'm not defacing, I'm beautifying." So what "defacing" is supposed to mean in this context has to be made more precise by pointing out the kinds of acts that it is intended to forbid. Lawyers frequently use as a defense that the law is "vague," and as worded would cover many acts that were clearly not the intent of the legislators; but the point is if it doesn't *say* you can't do a given thing, then you can do it.

Now of course, this is within reason, and need not take into account a reading of the words that is utterly at variance with the way words are generally understood. The reason for this, of course, is that words are imperfect expressions of mental acts, as I said in Chapter

5 of Section 3 of the third part, and so there is almost bound to be *some* interpretation of the actual command that has nothing to do with what any rational legislator would have intended. I remember one instance when I was going to Fordham University, which at the time required Seniors to be dressed "in tie and academic robe" (a short little black capelike sort of thing) when in the dining room. One student showed up in his robe and tie, but was shirtless (yes, he did wear pants; this was back in the dark ages). He didn't, as I remember, get away with it.

It is the authority's duty to promulgate the law *properly:* that is, in such a way that "the normal member" can know what it is. If the authority doesn't do this, then it is obvious that he is not serious about seeing to it that the law is obeyed; and since if the law is not properly promulgated, it is the authority, not the member, who is at fault if "violations" occur, and the member need not obey (even if he knows what the authority wants), because the law, having contradicted itself, is not a law. We saw a version of this (in Chapter 6 of Section 1 of the fifth part) by analogy with the moral obligation in discussing the reason why it is morally legitimate to take the more lenient interpretation of even the moral obligation when experts can't agree on whether there is one or not.

For instance, if there is a special speed limit on an expressway because of repairs, say, and the signs announcing this are posted on the road but *before* a certain entrance ramp and not after it, then no one need obey that limit between that ramp and the next sign indicating it—because anyone entering from that ramp couldn't back up to see the sign, and therefore could not know about the limit, and so couldn't be expected to obey the law until he got to the next sign. What this means is that the law in that place was not properly promulgated, and therefore *no one* has to obey.

There is a famous case of this in history. The people of Voltaire's

### Section 3: Society

time hated the Jesuits so much that they pressured the Pope into suppressing the Order; and to make sure that the Jesuits didn't exert counter-pressure, they persuaded the Pope not to proclaim the suppression from the balcony of St. Peter's *urbi et orbi* ("to the city and the world") but to deliver it to each Bishop, where it was to be read simultaneously in each diocese through the world. Catherine the Great of White Russia got wind, however, of what was afoot, and since she had a Jesuit school in her country which she didn't want closed, she forbade the Bishop to read the proclamation; which meant that in White Russia, the Order was not suppressed. When other ex-Jesuits from around the world heard this, they went to Russia and rejoined the Order, which rose from the ashes.

At any rate,

## Conclusion 9: An improperly promulgated law is not a law, and need not be "obeyed."

Secondly, what about what are called "unwritten laws": the kind of thing that are the essence of the "social pressure" I referred to in Chapter 3 of Section 1 of the fifth part?

These aren't really laws of a society, but rather the informal expectations that members of a community have about the conduct of other members of the community. I mentioned in that place what can happen to you if you have a beard and other men are clean-shaven, or if you are wearing a suit and everyone else is in jeans. There's no *law* against these things, but by going against what people expect of you, you make it difficult for them to predict what is going to happen if they interact with you; and people don't like surprises.

And the upshot of this is that, while there is no actual sanction imposed on the deviant behavior, the fact that most people

disapprove of it (or even don't know how to deal with it) will make it difficult to be with them, because they are bound to express their discomfort in unpredictable ways. This has, in many cases, the same effect as a sanction; but it lacks the reality of a sanction because you don't really know what is going to happen to you, and what the "law" actually commands.

Thus, there are many problems in coping with these "laws." In the first place, since they are just what the people as a whole happen to think, they are by no means clearly promulgated, and you have to find out often by trial and error what you are supposed to be doing (even asking, sometimes, is taboo). Secondly, you don't know how seriously the people take a deviation from expectations, and what they are going to do to you; and the "penalty" can range anywhere from a raised eyebrow and change of the subject to tarring and feathering.

In one sense, there really shouldn't be such expectations from the members of the community; a person should be free to behave just as he pleases as long as there's no law against it. But on the other hand, there is really nothing that can be done about it, because it is inevitable that if people are together in any significant way, they will come to expect certain behavior on the part of each other; and conforming to the expectations of others makes the social aspect of everyone's lives that much easier. So unless the expectations actually do *damage* to someone (i.e., violate some right he has), then there's nothing really wrong with them. In the case where rights are violated, of course, then laws must be passed to prevent the violation, and education campaigns mounted to change the attitudes of the people. In this way, many of the prejudices against Blacks have been softened in their effect, if not eliminated.

While I am at it, let me give a couple more definitions:

A *culture* is a community insofar as it has expectations for the conduct of the members.

The *culture of a community* is the collective mental attitudes and level of understanding of that community.

"*Culture*" taken absolutely is the set of mental attitudes that characterize the culture of the highest class of people.

I don't think these definitions need elaboration, and so let me finally get to why I think punishments for violations of laws can be carried out.

The problem here is analogous to that of self-defense, which we saw in Chapter 5 of Section 1 of this part; but there is a significant difference. In the discussion on self-defense, I said that the Double Effect failed if you took vengeance on someone for something he already did to you, because you then wanted his harm (violating the fourth rule) and couldn't say, "All I was trying to do was defend myself."

But here, the violation has already occurred, and the damage done by the member to the society has already been done. How then can you do *harm* to him after the fact without choosing to harm him, thus violating his right? Remember, I said that every sanction necessarily involves some harm, precisely because the potential violator has to be made worse off than he is now for violating the law.

Before Locke, the solution generally was that members didn't really have rights against the society as such, because even if they received their rights from their analogy with God, they did so *through* the community of which they were members, as I said in the discussion of the history of rights in Chapter 2 of Section 1 of this

part. Hence, the authority in the community had the power to do harm to individuals for the sake of the "common good." This was raised to its logical absurdity, of course, by Hobbes, who said that the sovereign could do anything he pleased to anyone, since everyone had handed over all his rights to him in the social contract.

But we've learned a little more of what it means to be a human being since then, and it will no longer wash that individual human beings are absolutely helpless before the power of the society, even if the society thinks it's doing what is for the greatest good of the greatest number. Stalin's purges are not even justified in the Soviet Union nowadays, thank God. So we can assume that individuals have their basic rights against society also, and not just against other individuals-and so they may not be killed, or caged, or enslaved, or tortured, or maimed, and so on. So the notion that society somehow has "a right to express its outrage" at people who do horrible things can't, I think, rationally be sustained. This variation on the "unjust aggressor" theory of self-defense winds up making the society exactly the same as the one it is punishing, if the sanction is barely sufficient (because then it's "an eye for an eye"), and worse if it's more than that. But how can you express your outrage by committing the same outrage? If you maim or imprison someone who has maimed another, aren't you condoning his act by saying that, just because you as a society are bigger than he is, you can get away with the very thing you won't let him get away with? No, that theory, in spite of its attractiveness, is, in my view, morally bankrupt, as is every attempt at vengeance, no matter what its goals might be.<sup>54</sup>

<sup>&</sup>lt;sup>54</sup>Catholic moralists and Theologians have argued that, since civil society is required by nature (because people can't survive without this particular kind of cooperation), then it is demanded by God. And since authority is necessary for society to exist, then it follows that the authority in society (and hence the power to punish) comes from God. This, of course, is what led to the "divine right of kings" theory,

But how do you punish someone if you can't do any of these things to him?

The argument goes this way: First of all, society can't exist if it

So it seems to me that *others* must regard me as sovereign over my actions, even if I wish deliberately to harm myself; the most they can do is inform me of what I am doing to myself, in case I don't realize that it is harmful. But if they go further and actively try to prevent me from harming myself, then they are violating my reality (as free) in trying to get me to avoid violating my reality. Thus they are doing to me the very thing they want to prevent.

Now of course, no human being (and therefore, no society) has the right to violate the humanity of another human being. Hence, if my self-destructive acts *harm someone else* in addition to myself, I can be forced by society (or another individual) to stop them; but any attempt to force me to do what is "nice" is to take away my essence as human for the sake of some "good" which is imposed on me and which I did not define for myself. But this rests on the false assumption that "good" is something that is objective, and does not depend on the goals that the individual has chosen for himself.

which Hobbes tried to justify philosophically without reference to a god. I would not really disagree with God's being the origin of the authority in society, and of its right to punish.

My quarrel comes in making the logical leap that *therefore*, society can do what it pleases to individuals as long as it is promoting the "common good," and with the notion of "common good" as something more than the preservation of the rights of the individuals. As human beings, our essence is to be free to do whatever we want with our lives, as long as it does not deprive someone else of his rights. True, the moral obligation constrains us to act within the limits of our human reality; but the "sanction" on the *moral* obligation is in the next life, not this one, and deals with the choice itself rather than the act (or the act only insofar as it is included in the choice).

Thus, society can only impose sanctions to prevent damage, not to promote the "common good" in the sense of what may be *beneficial* to the society as a whole. You have no right to force free beings to do what is "nice." I hasten to add that there is an exception for children here; they have to learn that "being nice" is a good thing, beneficial to others and themselves too. The point is that when they are adults, they may be "nice" or not as they choose, as long as they do no harm to anyone; but of course, they take the consequences of their actions (which might, e.g., be isolation from others they have annoyed).

can't expect cooperative conduct among the members. But cooperation can't be expected unless there are laws with their threats of punishment. But a threat is not a threat when it is known that it won't be carried out.

Therefore, if it is known that society won't carry out its threats, then the laws will tend to be disobeyed when it is to the members' short-term advantage (as it almost always will be) to disobey. But once this happens, the society collapses. This is true for any society. And unless *some* societies exist, human beings can't live human lives.

Therefore, if human beings are to be able to live human lives, it must be possible for societies to carry out the threatened punishments against violators. But the punishment still is an action which violates some human right of the violator.

That's the effect. What is the cause?

This is what I think it is: The person punishing the violator *chooses no harm to the violator, but solely chooses to protect the credibility of the threat* so that other people will not be encouraged to violate the law.<sup>55</sup>

Do not mistake me here. The punisher is not really using the punished person as an "example" to show to others, "This is what will happen to you if you break this law!" That would also be

<sup>&</sup>lt;sup>55</sup>I should say here that traditional moralists say that the solution lies in the fact that God is the creator of society and authority and this necessity for punishment, and therefore, the violator of the law has no right against society with respect to punishment—because no one has any rights against God. But then why do people who hold this demand that the punishment be the *least* necessary for the law to keep its force? Well, because a harsher punishment, as not necessary, is inhuman. Precisely; it violates the integrity of the violator, implying that the violator does not lose his humanity by his violation, *and so keeps his rights against society*. That is why I think the only sound argument for justifying punishment is the Double Effect, and not "righting the wrong" (which is impossible), "restoring order" (which can't really be done either, certainly not by creating another damage—another disorder), and so on.

immoral, because it would be using his *harm* as a means to the good effect of having the others obey the law—and the end never justifies the means, even if the end is the preservation of the conditions under which human beings can live human lives. So the "deterrence" theory of punishment has to be a good deal more subtle than it has been expressed up to now in order for it to be morally justified. It isn't the *punishment* that's the deterrent (or there would be no deterrent until there was an actual violation); it's the *threat* of punishment that is supposed to deter.

Hence, the attitude on the part of the one punishing is more negative; it is this: "If I *don't* actually punish this person, then in effect I'm giving permission to everyone else to disobey this law." He is *solely protecting the threat as a threat*. There is a big difference between this and saying, "If I punish this person, I'll send a signal to others that they shouldn't do things like this." In this latter case, he is using the *harm* as a way of making a forceful statement of the threat.

But aren't those really still the same thing? No, any more than it's the same thing if I break your arms because I want you not to hit me (and you haven't done anything but call me names so far) and if I break your arms because you've actually begun fighting with me and this is the least harmful way I can make you stop. Beware of thinking that anything that produces a given result is the same as anything else that produces it. This would mean that it is the same thing to fly to Boston from Cincinnati or to drive there; but ask anyone who has made the 16-hour drive if they are the same. Here, in the one case, I would be causing harm as a means to prevent my harm; in the other, I would be blocking harm that was being done to me.

Thus, the violator's *going unpunished* is what is "sending a signal" to the rest of the people; his getting away with violating the law is telling them, "It's okay not to obey. See, nothing happened to me."

And that is the damage to society which must be avoided, using the Double Effect.

That this is not a utopian way of looking at things can be seen from the following examples: First, some years ago, a very prominent player on the Cincinnati Bengals football team was found to have been using drugs, which was against the laws of the League, and the sanction for his violation was permanent suspension. But the team that year was, it seemed, headed for the Super Bowl largely because he was on it; and suspending him meant not only his not being able to play, but the probable destruction of the chances of the Bengals to win the World Championship. But, as the coaches said in the newspapers, "If we don't suspend him, then we might as well be handing out dope to every football star in the country. Even if it means the Super Bowl for us, we can't not suspend him." Again, Pete Rose, the manager of the Cincinnati Reds baseball team, last year was found to have a gambling problem, and was convicted of betting on his own team, something whose sanction is suspension for life. He was suspended, and also sent to prison for lying to the government about his income from gambling-but a great many people everyone sympathize with him. It's just that that kind of thing can't be allowed, and if he got away with it, then others would do what he did.

Let us then take it as established that an unpunished violation is an attack on the sanction of the law and so on the law itself, and therefore on the society, which can't exist without laws.

So we are finally in a position to discuss whether the Double Effect can be applied analogously to the way it was in self-defense to see if society can protect itself against this attack on it.

First of all, the act society takes to defend itself must be morally right except for the *effect* of the harm that is going to happen to the violator. This will, as with self-defense, almost invariably be the case.

### Section 3: Society

Imprisoning someone (i.e. locking him into a room) does no damage until he wants to get out. Even putting him into an electric chair and throwing the switch does no harm in itself; if there is a break in the circuit somewhere, the person does not get killed.

Note, by the way, that these rules apply to *any* punishment, not just the death penalty. I will discuss the death penalty specifically after going through all of the rules.

Secondly, there is a good effect of punishing the violator; the people do not get the idea that nothing will happen if you violate the law, and so the law will retain its force.

Thirdly, the *actual harm done* is not the means to the good effect. If, for instance, the violator should die of a heart attack before the sentence can be carried out, the society has still avoided giving the impression that it wasn't serious about the sanction. Even if the violator escapes and so no harm comes to him at all, the society has still kept from saying it doesn't care whether the law is obeyed or not. Hence, the harm does not have to be part of the punisher's choice.

Fourthly, the society must not want the punishment in the sense that the violator "deserves" it. That is, the motive of "getting even" or vengeance must be totally absent from the punishers.<sup>56</sup> No human being ever deserves harm from anyone, as I have so often said.

<sup>&</sup>lt;sup>56</sup>There are those who argue that this "he deserved it" is justice. Since he did harm, he deserves to have harm done to him. But how does harm done to him "right the wrong" he did? It only adds another violation of human nature. Granted, he abused his human nature, but that does not take it away from him; he has it because of his reality, not his actions. "Justice" in this sense could only be the "eye for an eye" justice in which the identical harm the perpetrator committed is done to him; because you can't equate a different kind of harm as "just as much" as the harm that was done. What he "deserves," in the sense of what he has a human right to, is not to have his human nature violated.

This fourth rule is in fact very often violated, it seems, in our present judicial system. I see judges on television saying to criminals, "I'm sending you behind bars for life, because people who do the things you've done are not fit to be in human company. Do you hear me?" Who is he to say that to anyone? No one of us is "fit to be in human company" if you analyze what each of us has done carefully enough. And don't say you are, my friend. You're no Augustine or John of the Cross or Thérèse of Lisieux; and they, who were totally honest about themselves, recognized that they were wretched examples of humanity; and if that's what they are, then how far away are the rest of us?

No, it must always be *unfortunate and unwanted* that the violator has to be harmed; the attitude toward the filthiest rapist murderer must be the same as toward poor Pete Rose. It's a shame, but it's got to be done; there's no way we can avoid it, short of destroying the whole fabric of society. The only one who has any right to be indignant about the things people do is God Almighty; and he not only isn't indignant, he welcomes the prodigal son with open arms and kills the fatted calf.

Finally, the punishment must be no greater than is *necessary* to ensure future obedience to the law. What this amounts to is that the punishment must be adjusted to the individual circumstances of the violator so that the threat will be kept as a deterrent to future violations, and yet it will do as little harm to the violator as is consistent with this. There was a case before the Supreme Court about a man who was too insane to stand trial (for murder, I believe), and could probably be rendered competent if he took medicine; but who refused to take it; the question is whether a state can force him to take the medicine so that he can stand trial for his crime. On the assumption that you can tell whether a person is faking insanity or not, then not forcing him to take the medicine is not

going to give other people ideas that they can get away with murder; and so nothing is to be gained by trying and punishing him—which means that morally speaking, it may not be done.<sup>57</sup>

It may also be that what serves as a deterrent to one group of people in the society is not sufficient for another group. For instance, a year in prison might be devastating to a middle or upper class citizen, while for a person from the ghetto it could even be a relief. A friend of mine who was doing some carpentry for me once didn't show up one weekend. When I asked him what had happened, he said, "Oh, I beat up on my wife a little and she called the cops; and so I was in the workhouse for three days." "Good heavens!" I said. "How horrible!" "Hey, no big deal," he answered; "anyway, she deserved it." Obviously, a little thing like a weekend in the pokey wasn't sufficient to make him even bat an eye—though of course, there was probably a good deal of bravado in what he was saying.

But this means that

Conclusion 10: In assigning punishment to actual cases, discrimination must be used, so that the least harm will be inflicted consistent with the threat's being maintained for the people who must obey the law.

Yes, you must discriminate; and it is inevitable that Blacks or people in general from the ghetto (who have very little to lose because their lives are so circumscribed already) will need harsher

<sup>&</sup>lt;sup>57</sup>This should not be taken to be a pronouncement on the actual case, since all I know about it is based on the scanty evidence I have from news reports; and there may be many ramifications about the real situation that would change my view of it. The point is merely that if the person can be unpunished and the sanction still preserved, then the punishment may not morally be carried out.

punishments to ensure that "practically all" of them also obey the laws. This is unfortunate, but it is a fact of life, ignored at the peril of the society as a whole.

There is a difficulty here, of course. In our society today, young Black men are viewed by people as a threat—and this attitude of people is not helped by rap groups like 2 Live Crew which extol rape and violence as just "the way Blacks are." Hence, when a young Black man is on trial for a violent crime, it is very likely that a randomly picked jury will be prone to think that he committed it, and that he is one of the ones who must be severely punished or we are going to drown in crime. In fact, of course, young Black men do account for a disproportionate number of the violent crimes committed.

But this means that a person is apt to be more harshly treated simply because he is Black, not because the circumstances of the case warrant it; and judges must bend over backwards to see that this bias of the society is compensated for in sentencing, but that the threat of the sanction is still preserved. It requires a good deal of discretion and wisdom on the part of the judges; but it must be done.

But the point is that you can't simply argue that because there are more Blacks in prison than Whites, then this is vindictive racial bias or hatred. As in most instances of invidious discrimination (as opposed to the discrimination that justice requires), you can't establish it by looking at numbers.

Now then, what about capital punishment? Is it ever the lightest sanction necessary to ensure obedience?

This is one of those issues where people who are otherwise rational tend to go off the deep end. There was a young man who taught criminal justice in my college, and was against capital punishment, "because it doesn't deter." I demurred, and he cited studies showing that it didn't. I pointed out that the "evidence"

### Section 3: Society

these studies used was in many cases simply silly (comparing states without capital punishment to neighboring ones that had it—but that didn't enforce it); and I found studies that showed what the flaws were, and that when you factored the corrections into the statistics, capital punishment was shown to be a deterrent. He said, "I'm still against it. I don't care what your studies show." Fair enough; but when I asked why, he said, "Because it doesn't really deter."

But all of that is, in one sense, beside the point. The point is that it must never be reasonable for a person to break the law. The threat of punishment is never going to deter people who are either insane or don't care what happens to them or convinced that they won't get caught or so stupid that they don't connect the act with its consequences. But deterring those people is not necessary to preserve the law; it is still the case that "practically all" people will obey even if they don't; and there is no sanction, no matter how severe, which would deter people like this. So we can leave them out of Hence, the people who are going to be affected by consideration. the threat of punishment will be the rational people who are weighing disadvantages against each other. Will the disadvantage from not obeying the law be outweighed by the sanction? If this would happen with "the ordinary person" who has to obey the law, then he won't obey "practically all the time."

Now then, there are certain acts that not only disrupt the society, but threaten its very existence and the lives of the members as well. Murder is one of these, rape another; but let us take what I think is the most disruptive of all: terrorism, or random slaughter (I exempt from this discussion suicide bombers, since obviously no threat is going to deter them from what they do, since the act itself kills them). Generally, the motive for engaging in terrorist acts is extremely noble, as with the Palestinians who have been displaced

from their homeland and have no country now at all, and no hope of moving the Israelis to see that they get one (let us discount vengeance against the Israelis for taking their homes away in the first place; the Palestinians have a legitimate grievance). These people think that the only way to wake up the world to their plight and put pressure on complacent nations to do something about it is to engage in terrorism.

But no one can live a human life if he must go about in fear that he might be bombed for no other reason than that he happens to be in the way of a terrorist making his point. Hence, it is absolutely essential for the survival of society that these acts be reduced to the level where they are so infrequent that the people don't need to be concerned about them any more than they are concerned about tornadoes and earthquakes and other disasters. Current post-war Iraq is a case in point here. As I write this, terrorist acts are occurring daily, making daily life next to impossible because of the fear.

The difficulty with not imposing the death penalty for terrorism is that, as long as the terrorists are alive and in prison, this *encourages* their comrades to engage in terrorism to force the authorities to release them. This has happened in Iraq, with innocent people kidnaped and beheaded unless the terrorists held in prison are freed, or unless troops are withdrawn from the country. That this tactic works has been amply shown in, for example, the Filipino troops' being withdrawn to save a worker, which was followed by a spate of kidnapings; but in many places where terrorism has been widespread, as in Italy a while back I heard that the average stay in prison after being convicted of terrorist acts is two years—after which the person is very quietly released.

In cases such as this, it becomes advantageous to engage in terrorism. The *reasonable* terrorist would say to himself, "If I do this, I probably won't get caught; but even if I do get caught, I won't

actually be behind bars very long." That kind of thinking must not be allowed to happen.

You might argue that if the society makes sure that terrorists are never released, and it becomes known that no matter what happens, they won't be, this would be enough to discourage terrorist efforts to release them. But of course, (a) that would take at least thirty years to be demonstrated convincingly; (b) in the interim, this would just encourage greater terrorism to see how much pressure could be brought to bear to get people released; and (c) in an open society in which the officials are elected by the people, the pressure to release these people and stop the terrorism by their comrades would be almost guaranteed to be overwhelming.

On the other hand, if the convicted terrorists were summarily executed, they would not be there to be released, and so there would be no point in engaging in terrorism for that reason. Further, if the execution occurred very soon after conviction, it would be seen by potential terrorists that there would be no hope of lightening the sentence (by things like good behavior in prison) as time went on, and so the deterrent would have that much more force. Some might argue that fanatics will engage in terrorism out of vengeance if this punishment is put into practice. But against that is the fact (a) that fanatics who don't care what happens to them can't be affected by deterrents anyway and (b) it has been demonstrated that such people are very, very few. When push comes to shove, even people with very strong convictions are very reluctant to do something and face certain death.<sup>58</sup>

<sup>&</sup>lt;sup>58</sup>There is some evidence that this is true also of suicide bombers, which may sound strange. But to the extent that what they do accomplishes little except their own death, and to the extent to which such things can be made to be looked on as disgraceful, the volunteers will become fewer and fewer.

It seems to me, therefore, that at least for terrorism, and quite possibly for other crimes not so obvious (such as murder, or at any rate certain types of murders), a very strong case can be made that the only punishment that deters and does not actually tend to make it rationally probable that the crime will *increase* is the death penalty.

"But suppose you've convicted the wrong person!" is the cry. Suppose you have; it happens. "If he's dead, how can society ever make it up to him?" It can't. But by the same token, if he's been imprisoned for twenty-five years, how can society make *that* up to him? Once you've done some damage to a person, there is no way you can undo it; no amount of good you can do him will "make up for" it, because, as I said in Chapter 3 of Section 7 of the fourth part, and in many other places, goodness and badness are not commensurate with each other.

And precisely *that* is why *the damage cannot be chosen in the first place.* If you make a mistake, the damage is done and cannot be undone; and it is the sentimentality of those who call themselves "compassionate" and refuse to think that says, "Well, we've convicted you wrongly, but we're letting you go now and giving you all these neat things," and can't understand the wrongly accused criminal when he says, "I don't want these; I want the last twenty-five years of my life back." "Well, what can we do?" say these people; "you're alive, aren't you?" "You call this life?" he asks.

The assumption behind much of the argument against the death penalty is that death is the worst of all evils; but as suicides show, there are obviously many people who think that death is preferable to certain kinds of life; and there are also people like Patrick Henry, who cried, "Give me liberty or give me death!" and John Paul Jones, who regretted that he had but one life to give for his country. Standards for good and bad, as I have said so often, are subjective; and so there is simply no meaning in saying that something like life

imprisonment is "objectively less severe" than death. To be cooped up in that hell-hole called a prison until you rot there could very easily be looked upon as death by slow, severe torture.

"Yes, but when we put a man into prison for life, we're not actually *killing* him. Even if he thinks this is a fate worse than a quick and painless death, we still have no right deliberately to take a human life." Precisely. And we have no right deliberately to coop someone up under the conditions of prison either. We have no right to do *any* harm *deliberately*. This argument against the death penalty is logically an argument against any penalty at all. Every penalty is discriminatory, every penalty is irrevocable, and every penalty is a harm that we have no right to impose on another.

No, when the penalty is assigned and when it is carried out, the attitude of the one doing it must be, "There is nothing short of this penalty which is going to avoid an increase in this crime; and so to protect the society and its members, I must attach or impose the penalty, and may God have mercy on the violators." Those who oppose the death penalty "out of respect for life" should be aware that the death penalty is precisely a *pro-life* act, because it *saves*—and is solely *intended* to save—the lives that would be lost by tacitly giving approval to the acts of violence the law is supposed to prevent.

It is not that by killing this criminal you are protecting society from future crimes by *him*. This may be a side-effect of the act; it is that by *not* killing him, you are *telling* people that it is all right to kill (or bomb schools and churches) when the reasons get serious enough. Society must never do that.

And, in fact, I cannot believe that it is a coincidence that since the time when the death penalty was in practice abolished in our country (by removing the penalty or by not carrying out the sentence even when it had been imposed), there has been a marked increase in the crimes that used to carry it. If you say that this is due to other

factors, to me you sound like the tobacco companies arguing that there's only a chance correlation between smoking and lung cancer.

As to other cases of the least-severe penalty looked at unsentimentally, it can be said that one thing that people dislike a great deal (and go to great lengths to avoid) is physical pain. But physical pain is in itself merely a sensation, as I said in discussing the problem of evil in Chapter 12 of Section 5 of the first part and elsewhere, and so is not itself a damage, though we are built so that damage is generally reported by the sensations we call "pain." Still, it is possible to inflict intense pain on someone without actually doing him physical injury.

Given this, it would seem as if in many cases the least damaging penalty which simultaneously would have the greatest deterrent force would be the infliction for a short time of intense pain, such as by flogging or imparting electrical shocks with cattle prods, or something of that nature that I cringe at as I write. This sort of thing is now regarded as "cruel and unusual" punishment, though flogging was once quite common. But it isn't really cruel if no damage is done to the person and he is simply let go, having paid his penalty within fifteen minutes. Within a couple of days (or perhaps even hours), he will have recovered, and can resume his normal life; he will be no worse off than a person who has had a tooth drilled—except for the fact that he will think very hard before he commits the crime again, as will people who hear about what happened to him.

People who commit the crime more than twice afterwards, of course, would have to be put into prison to remove them from society; but I would predict that the danger of recidivism would be enormously lessened with this penalty for most crimes, (a) because of the fear of incurring the penalty again, and (b) because the criminal will not be forced into intimate contact with the worst possible influences and be given the education in crime he gets by

being in prison.

I submit that because of our sentimental way of looking at things, we have eschewed the most compassionate way of punishing criminals in favor of penalties that do much greater physical and especially mental damage to the people we are punishing. I don't see any comparison between the damage—the actual damage, now—in removing a person from work, home, family, and friends and placing him in that sewer called a prison, and giving him for five minutes pain so intense that he almost faints; yet I am convinced that the latter would work better as a deterrent.<sup>59</sup>

One final remark about penalties before we move on. There is a sense in which the violator can be said to have "asked for" the penalty, because he chose the crime which had it attached to it. Just as a person who cuts off his hand is asking for the inability to pick up things later on, so the person who commits a crime can't avoid choosing the side-effect of the penalty that goes along with it (always supposing that the Double Effect does not apply, as it does in some cases, as in civil disobedience to protest an unjust law). Therefore, the imposition of the penalty is not unjust, even though, insofar as it is damage, it cannot be chosen by the authority on the grounds that the criminal "deserved" it.

<sup>&</sup>lt;sup>59</sup>I once was proposing this in class, and an Iranian student of mine stopped me in the corridor afterwards, and said, "When I was in Teheran, I was sitting on my motorcycle downtown, and I turned my head to look at a woman [This was against the law]. A policeman saw me, and right there, he stripped off my shirt and leaned me over the motorcycle, and whipped me twenty times. It hurt very much." "Did you ever look at a woman in public again?" I asked. "Oh, no!" he cried.

I think a good case can be made that such a law cannot be justified, because it does not prevent any violation of anybody's right (no damage was done by looking); but all I am trying to illustrate by that example is that (a) the deterrent works, and (b) no real harm was done to the student.

## Chapter 4

## Justice

And this is another way of saying that the justice of the punishment does not mean that the criminal has a "right" to it. Given our definition of rights in Chapter 3 of Section 1 of this Part, that they are moral powers to do something, this is absurd. Hence, the concept of justice does not always mean "respecting the rights of others."

And since we are now dealing with society, we can unpack the various senses of "justice." First, the general definition.

# *Justice* is the virtue of fitting one's action to the reality of the other people affected by it.

We saw this in the discussion on the "cardinal virtues" in Chapter 6 of Section 1 of the fifth part. I mentioned there that if you generalize and fit the action to all the people involved including yourself, this becomes the same as morality in general, and is the cardinal virtue of *honesty*, which is what the Greek word Aristotle used primarily meant, and which was why he included this all-inclusive sense in his definition of *dikaiosyne*. But our word "justice" deals only with a person's relation to *other* people than himself. You aren't really being "just" to yourself when you act consistently with yourself, but "true" to yourself or "honest"; and similarly, when

you violate your own reality (acting as if you aren't what you really are), you're being hypocritical or dishonest, not "unjust" to yourself.<sup>60</sup>

Here are various senses of justice, then:

*Commutative justice* is the virtue of not violating the rights of others.

*Retributive justice* is the virtue of imposing a penalty on a violator, consistently with its being the least harmful one in his situation which will still preserve the sanction.

*Distributive justice* is the virtue of exacting cooperative acts from those whose cooperation inconveniences them least, and giving to those who need the society's help most.

Commutative justice is really what we have been talking about in the preceding two chapters: respecting the rights of others, including giving them compensation for services rendered. All I want to do here is reiterate that commutative justice does not mean the same thing as "treating everyone equally."

Retributive justice is what I alluded to above, when I said that it is just to impose the penalty on the criminal because "he asked for it" by committing the crime. He doesn't *deserve* the penalty, nor did he "earn" it, as if it were a kind of reverse "payment for services rendered." Still, *he* is *responsible* for the penalty because he committed the crime and could have avoided the penalty by avoiding

<sup>&</sup>lt;sup>60</sup>Of course, there is a sense that you are being "unfair" to yourself; but this supposes a kind of mental separation between you and yourself; you as agent are being "unjust" to that other "you" that is violated by what you do.

the crime. You will recall that in discussing morality and the choice in Chapter 5 of Section 1 of the fifth part I said that you are responsible for what you could prevent by your choice. Of course, the authority is responsible for the penalty also, because he could choose not to impose it; though he is not *morally* responsible, because he imposes it only through the Double Effect, where the harm is precisely kept out of his choice. Hence, the moral responsibility for the harm done is the violator's.

And it is because the violator is the one morally responsible for the penalty that the punishment is suited to his reality, and therefore is just. But, as I said, this does not mean that he has a right to it, or that, because it is just, it may be chosen as such by the authority. From the authority's point of view, the harm must always be an unfortunate but unavoidable side-effect of "preserving the sanctity of the law," as they say.

As to distributive justice, we will have to elaborate on it later, because its main application is in civil society, whose common goal is the preservation of the rights of the members. But the general idea is that cooperation is needed for people's rights to be protected; and therefore, the society can demand cooperative acts (which are not in themselves in the person's self-interest, remember) from those who are most self-sufficient (and who therefore need civil society least) and use these cooperative acts to help out the people who would be dehumanized if they were left on their own. Thus it is just for civil society to take most from those who have most and give them least, and to give most to those who have least and who contribute least to the society. But this sort of thing is precisely not just on the view of commutative justice, because there is no "compensation for services rendered" on the part of those who contribute most to the society, but only a threat of punishment if they refuse to contribute. Commutative justice applies *only* to the economic relationship;

distributive justice and retributive justice belong to the social relationship.

## Chapter 5

## Authority

ooperative acts, then, which are not in themselves advantageous to the one who performs them, can be counted on because of the sanction attached to them making it disadvantageous not to perform them; and given the general willingness of people to do what the society wants (since it is in their long-term interest to belong to it or they wouldn't have joined), then it will be the case that practically all the time the members of the society can expect that what is commanded will be obeyed.

But this, as I said, supposes that the members will have some way of knowing what statements of other members are actually laws of the society and what statements aren't; and that implies that there has to be a recognizable source for these statements.

Authority is the status in society which has the right to make laws, to see that they are kept, to impose sanctions on violations, and to decide disputes among members. The person or persons in that status are referred to as "the authority" or "the authorities."

*Leadership* is the ability to persuade others to do what one thinks is the best course of action for them.

Leadership is what exists in a community; authority in a society.

5: Authority

A leader remains a leader only as long as he can persuade others to follow him; and so essentially he is giving advice, not orders. The authority has the *right* to be obeyed, because he is the spokesman for the society as such, telling people what cooperative acts are expected of them by the society.

Since every society is also a community (since the people necessarily share some interests—if nothing else, getting the common goal accomplished) and so have expectations of how others should conduct themselves, then it makes sense to have the leaders in the community also be the ones in authority. If not, then the leaders should be wise enough to realize that they have no business trying to persuade the members to disobey or to disrespect the people in authority.

A society that bases itself solely on leadership, however, is like a society that acts by consensus; it is extremely inefficient, and often can be unjust, because if there is more than one leader (as there frequently is), the members don't know which one to follow. The American Indians suffered from this; the chief in most tribes was just that: the most prestigious member, and his advice was undermined by others who wanted to take over. That lack of authority in the Indian society was perhaps as much as anything what led to their downfall; among other things, the Americans negotiating with the tribes didn't really know who to deal with.

I find it interesting that tyrants tend to give themselves the name "leader." Fidel Castro immediately comes to mind; but there is *il duce* Mussolini and *der führer* Hitler, as well as the "dukes" (*duces,* leaders) of the middle ages. Augustus was the really humble one; he called himself the *imperator*, "the one who gives orders" (the general)—which, of course, became "emperor" in our sense of the term as his successors spelled out what this implied. Of course, what all these people are trying to do is capitalize on the "community"

5: Authority

aspect of society, presenting themselves as a friend of everyone and just *primus inter pares*.

But it goes without saying that leadership is not *necessary* for authority, but merely desirable. You have to obey the authority because he has a right to be obeyed; but it is obviously a lot easier to do so if he has convinced you that what he is telling you to do is what you would have done even if he hadn't commanded it.

At any rate, that is what authority is. Now since a society can't exist without laws and their sanctions, it follows that

## Conclusion 11: Insofar as a society cannot exist without laws, it cannot exist without authority.

The reason that conclusion is worded as it is is that there is marriage, which, as I said, does not need sanctions or laws or authority. But I will discuss the reasons for this later.

In all other cases, the members must somehow agree among themselves on the form that this particular status will take, so that they can know what they have to obey and what they don't. We will see later the various possible forms of government of a society; but for now let me just say that there is no "objectively proper" form for any society, not even civil society.

But supposing that the members agree on what the status will look like and who is to be in it, what is the role attached to this status? As you can see from looking at the definition above, there are three basic functions: (1) that of deciding what the laws and their sanctions will be (the *legislative* function), (2) seeing to it that the laws are promulgated and enforced (the *executive* function), and (3) imposing the penalty in accordance with retributive justice and deciding disputes among the members (the *judicial* function). In the United States, of course, these three functions are separated into

5: Authority

three as it were competing "branches" of government, using one to curb excesses of the other; but there is no necessity for this. In small societies, a single person can be chosen to perform all the functions—or they can be parceled out any way the people as a whole initially choose.

But let us discuss the functions briefly in turn.

If the authority is to make laws consistent with the society and the members, then it must know the following: (1) what the common goal of the society is, (2) what means are most effective in reaching it, (3) what specifically the common good of the society is (i.e. what rights the members have that must not be violated), (4) what measures must be taken to see to it that their rights are not violated, (5) the limits of the authority, and (6) what acts are in practice possible, given the actual members in the society and the realities of the situation the society is in.

I mentioned in the preceding section that a firm with employees in it is a society which has three coordinate common goals: (a) a profit for the entrepreneur, (b) a service to the consumer, and (c) providing work for the employees. Based on requirement (1) above, the entrepreneur (who is, of course, the authority in the firm) must recognize all three of these goals as coordinate and not give orders that turn the firm into simply a machine for making profit for himself. According to requirements (3) and (5), he has to realize that he can't make demands about the way the employees dress if this has nothing to do with their job performance or the service the firm is providing; and according to requirement (6) he has to realize that, for instance, if he pushes his workers too hard, he will get less productivity out of them than if he doesn't. And so on. I will talk specifically about firms like this later.

The point here is that the authority has to have a good deal of information, and not a little wisdom.

But there is no magic about the status of authority that gives you either the information to know the facts about the society's situation or the wisdom to be able to figure out what is the most prudent course of action for the society to take, and therefore what laws to issue for it.

There are two fallacies connected with this—at least with the wisdom end of it. Unfortunately, everyone thinks he is wise; but there are very few who really are. But just as there were myths dealing with economics, so there are Two Great Myths dealing with society.

The First Great Myth is that somehow the office itself bestows upon the person in it an extra wisdom that he did not have before.

Practically no one in our democratic age holds this any more; but you still find traces of it in places like Religious orders. Historically, it was a kind of conclusion from the theory of the divine right of kings. The argument went this way: Since society is necessary for human existence, then God, who created human existence, implanted in human nature the requirement of belonging to society. But since authority is necessary for society's existence, then God, who made human nature, also implanted the necessity to obey authority into each human being; and therefore, all authority gets its force from God. The fact that St. Paul says as much in *Romans* doesn't hurt this argument at all.

In fact, in a sense it is true; but it is true in the sense that everything ultimately comes from God; and so we have a moral obligation to obey authority, not because God said so, but because if we don't, then we're acting inconsistently with ourselves as members of the society, as I will say more at length later; and this, of

course, involves eternal frustration—but not because God will spank us.

But the fallacy lies in assuming that, because God put the requirement of obeying authority in us, so that it is immoral not to obey, and because God "wills our greater good," then somehow the authority will be given the "grace" to assure that what he orders is for the good of each member who has to obey.

The reason why this is a fallacy is that it is (absent immoral or unjust laws) "better" to obey than disobey in that disobedience is immoral, and hence brings on the violator eternal frustration, even if he escapes the sanction imposed by the authority; and it's always better by any standards not to be frustrated than to be frustrated. But this says nothing at all about whether the command means that obeying it is the course of action in this life most likely to achieve the common goal or further the member's temporal interests. And you have to close your eyes completely to what societies do to hold this. God "wills our good" in the sense that he wants us to achieve (at least after death) the goals that we have set for ourselves (even if the goal is self-frustration); but that is a tautology; and he certainly, it seems to me, does not will our temporal good or there would not be such things as diseases and natural disasters that maim and kill people, and which no human agency could prevent. Furthermore, there is the manifest fact that authorities can, wittingly or unwittingly, issue laws that require members to do morally wrong things; and where is the "grace of office" preventing this? In our own society today, there are some organizations, such as hospitals, which require doctor members to perform abortions; and clearly, if you have followed me this far in this book, that means a requirement to commit murder. I say

nothing of Germany's orders to its members dealing with the Jews.<sup>61</sup>

In spite of the fact that the idea of the "wisdom of office" is not with us, a vestige of it still remains, and it would be well to warn against it in a formal conclusion:

## Conclusion 12: No society except a family should regard itself

<sup>&</sup>lt;sup>61</sup>There is a variation of this in the Catholic Church. I mentioned in an earlier footnote that the Holy Spirit does prevent those in authority from *teaching* what is false with respect to faith and morals (at least, it prevents the bishops as a whole from doing so, though an individual bishop may be out of communion with the others and teach what is false); so in this sense, there is a "grace of office" here. But the only individual bishop it actually works on is the Pope. And even there (a) what the Holy Spirit does is negative, and he is not therefore guiding the Pope or the College of Bishops toward more and more profound understanding and teaching; and (b) this helping hand of the Holy Spirit only deals with what is necessary for the community to perform its function of preserving and teaching the facts about Jesus and what he said. Hence, as far as governance is concerned, the Pope and even the whole College of Bishops acting together may make egregious blunders. I personally think that one was made in Luther's case-probably because those in authority at the time had too exalted a notion of the role of the Holy Spirit in the life of the Church. Luther had some good ideas that were, in fact, in the Church from the very beginning but which almost had been lost sight of; and the high-handed attitude of the people in authority at the time prevented the Church from learning what Luther had to say that was an improvement over how the Church understood the facts it was preserving, and prevented Luther from learning where his reform of the teaching went too far. That, as I say, is my own opinion.

Another peculiar aspect of this is the fact that, in a Religious order, when a person takes a vow of obedience to the least sign of the authority's will, he is deliberately offering his self-determination as a sacrifice to God; from which it follows that obedience even to stupid orders from above (and there are pretty darn stupid ones, as I can testify from my own experience) are in fact what is best for the person at that time, because all he is really interested in is the life of love and disinterest in himself, and not the life of self-fulfillment. But this is another case of the Christian paradox, and is not to be taken that the authority in the Religious orders does necessarily is what is temporally beneficial for the members of the order, and that he can rely on the fact that God will turn his stupidity into brilliance.

## as or be run as a family.

There are a couple of things wrong with regarding a society as a family. First of all, it overemphasizes and tries to inculcate an exaggerated sense of community and "togetherness," when each member in fact is *primarily* (and properly) interested in his own personal goals, and is merely *willing* to cooperate because he shares to some extent the common goal of the society itself. Members, if anyone, know the reality of the situation, and when the authority gets smarmy and tries to hold up the "team" as something greater which members ought to worship, they recognize the phoniness, and if anything the efforts are apt to be counterproductive. Far better be honest, and let team spirit develop of itself; it cannot be imposed by the authority—because it is something that belongs to the community, not the society.

Secondly, it is inevitable that if the society is regarded as a family, the authority regards himself as the father, and wants the members to think that "father knows best." In a family, the parents *do* by nature have authority over their children *because* they know things about behavior and conduct that children don't know, as we will see later. In that sense, in a family particularly of young children, father and mother do know best. But once the society is made up of adults, then the one in authority has no idea what is "best" for the members, because that is *determined* by each one, not discovered by anyone, and the authority has no business, therefore, treating the members like children. The members have to listen to him because otherwise the society won't function; they don't have to listen to him because he's a nice guy or because he's intelligent or because he's wise.

But secondly, there is the democratic fallacy:

The Second Great Myth is that somehow the mass of the people taken together have a wisdom that knows what the society should do.

Democracy may be a reasonable form of government; but if it is, it is *not* so on the grounds that the people as a whole know better what is good for the people as a whole than a single authority or a small group in authority would. In general, as ancient Athens, a complete democracy, showed so clearly, democracy is dumbocracy. The people know what they want, but they want contradictory things; and it doesn't bother them that one of their wants if fulfilled will destroy another; they want both and both completely.

In my own country at the moment it is clear from the election just concluded that the people (a) want government spending reduced drastically, (b) want their taxes cut drastically, (c) want the government to spend more rather than cut programs that affect them directly, and (d) want taxes increased on other people to pay for the programs. It is interesting that this is as true when I revise this as it was when I wrote it fourteen years ago.

There is no way you can make any kind of wisdom out of what the people have chosen; and the fact that the people in authority are at the mercy of the citizens every two years means that they will resort to demagoguery and kowtow to the political action committees. I do not see how people who can preserve the country can ever get into a position of authority so that they can accomplish the feat, or stay in office long enough to do it.

No, there is wisdom lurking there (it is to be hoped) *within* the people; but the people as a whole don't have it. Every politician in a democracy has to *say* they have it; but politicians who believe it are people you wouldn't want running the country, since they are apt to pass laws forbidding air travel on Christmas Eve to prevent Santa

Claus from getting hit.

Then what is to be done? The authority can't rely, really, on his own information and wisdom, because he lacks a good deal of information, and he doesn't get any special wisdom simply by being appointed to the status of authority. But he can't take a poll and follow that, because that might show what the members want (at the moment), but it's not necessarily what is the best way to accomplish the common goal of the society (and it's not necessarily even morally right).

Let us split these two requirements apart. As to information, we can say the following:

Conclusion 13: Every member has a moral obligation to supply the authority with information he has that is relevant to choices that the society is to make; and the authority has the obligation to open channels of communication from members and take their information into consideration.

A worker on the assembly line is admitting that he did what was *morally wrong* when he says to a coworker, "I could have told them that that wouldn't work." If he could have, why didn't he? "It wasn't my business." It certainly *was* his business. It would only not be his business if the people in authority could know all the relevant facts without being told by the people who are in a position to know them.

Thus, every society must *encourage* the flow of information from the members to the authority, and make it known that the authority can't make proper decisions about what the members should do unless the members inform him of the facts they know relating to the question under consideration.

In fact, the authority should actively solicit information from the

members when considering something to be done, and not just keep the decision in a tight little group. It should do so making clear that what it is looking for is *facts* relevant to the issue, and that the members have an obligation to supply those facts and will be held accountable if it becomes obvious that they knew something and didn't report it.<sup>62</sup>

Of course, a lot of advice will be handed up in the name of "facts," and a great deal of irrelevant information will be gleaned by this method; but that sort of thing can be weeded out by the wise advisors of the authority. The point is that only if something like this is done will the authority know that it has all the information that exists in the society (since this information is not of itself centered in the authority, but spread out through all the members).

And this is not just a ploy to make the members feel that they have a stake in the society or are involved in its governance. In general, the members should *not* be deciding what the society should do; that is what the authority is for, and a society that speaks with many voices is silent. No, the point here is not that this fosters community spirit in the society (it does, but this is a side-effect), but that the authority needs the information in order to be able to make the correct decision.

But, secondly, the authority also needs wisdom. What should be

<sup>&</sup>lt;sup>62</sup>Of course, it does not follow that in the real world everything will be hunky-dory if this is done. I once noticed that a priest in a Benedictine monastery that I was visiting was omitting word "men" from the Nicene Creed at Mass. Since no individual priest or bishop has the right to tamper with the wording of the official statement of the Church's belief (and since this particular omission changed the meaning of what was being said) I, following my duty to let the authority know, wrote to the abbot to point this out. Once I had done that, the matter was out of my hands, no matter what the abbot did about it; and in that sense, I did not care what he did. But some time later, when I wanted to go back there and make a retreat, I discovered I was *persona non grata* because I didn't agree with the way they did things there.

### Section 3: Society

done here?

Conclusion 14: The person in authority must seek out a small number of wise people to act as advisors, and *defer to their judgment*, not simply rely on his own wisdom. The final decision is to be the *society's*, not his own.

That is, because the authority has to make the final decision, it does *not* follow that this decision ultimately must be based on what *he* thinks is best. This is a variation on the First Great Myth. The wisdom of the society does not lie solely or even chiefly in him; and he is making the decisions *of* the society, not really decisions *for* the society. Hence, he may find that he must decide something different from what his own better judgment dictates, if his advisors think that his view is incorrect.

This does not mean, however, that the person in authority can escape *responsibility* for what he commands. Responsibility ("answerability") in a society, both on the part of the member and the part of the authority is different from what it is outside of the society, because what one does affects what others do, and so one becomes responsible for others' actions and sometimes is not responsible for one's own.

I will discuss the responsibility of the authority in some detail later, because it is much misunderstood; but I want to get through the other functions of authority before I do so. So let us press on to the *executive* function: to see to it that the laws, once issued, are carried out.

We tend to think of the "executive" as the "chief lawmaker" because in our form of government as George Washington applied it, the President proposes laws to Congress as well as having Congress make up the laws itself; and the President can also veto

laws. But the *function* of the executive is really just to carry out the laws that are made. As I said, this is a function, not in itself a "branch" of authority, and can easily be vested in the person who makes the laws.

Essentially, the executive function is the *policing* or *enforcement* function of the authority; the way the authority sees to it that the members obey.

# Conclusion 15: The authority is to do as little watching over the society as possible, consistent with seeing that the laws are obeyed "practically all" the time.

That is, it will be inevitable that some infractions will go unpunished, because you can't be everywhere; but that is all right, as long as the members as a whole are obeying, and the discipline is not so lax that members begin to see people getting away with shirking their duty and start copying them. The people, remember, are (a) self-determining, and so should be left to be so as much as possible, and (b) basically willing to obey, and so won't need too much supervision if the society is governed properly.

I talked about the effect of too little enforcement earlier when I was speaking of sanctions that don't work because they are not inevitable. To the extent that there are unenforced laws, the members of the society get the idea that it's all right to ignore the laws in general, and this will destroy the society. Enforcement must be strong enough to show that the authority is serious about having the people obey the laws.

There is one exception to this, however—at least in theory. It is sometimes the case that a law must be passed against some act just to show that the society does not endorse it. Even if the law is unenforceable, then, using the Double Effect, this may be done so

#### Section 3: Society

that the society can express its disapproval of the act.

For instance, it would not in principle be morally wrong for the society to pass a law against, say, reading pornography even in the privacy of one's home, or engaging in anal sex even at home, or possessing marijuana, or various other acts that morally should be frowned upon, and which are deleterious to the people in society, even if no one's right is violated by them.

But since people have a right to be left alone to live their own lives except insofar as they are cooperating for the common goal of the society, these laws insofar as their enforcement would invade the privacy of the members (a) can't in practice be enforced to the extent necessary to ensure that they are obeyed "practically all the time," and (b) can't morally be enforced anyway, since they infringe upon the right not to be interfered with unless this is necessary for the common goal (remember, the "common good" is not some "benefit" to the society or the members collectively, but the rights of each of them; it is obviously contradictory to violate someone's right in the name of protecting the rights of the members).

Hence, if there *are* such laws, they must not be enforced. But lack of enforcement of these laws has also the effect of undermining the authority with respect to all laws (because the members look at other laws also and wonder if they are on the books "just to make a statement"). Furthermore, it is almost inevitable that lower-level officials, seeing the laws on the books and not being blessed with the wisdom of being able to make very subtle distinctions, will enter on crusades to see that these laws, like the other laws of the society, are strictly enforced. We had a case here recently in Cincinnati where a homosexual couple was arrested for holding hands in public—and the held hands were in the *lap* of one of the people! An elderly lady wrote in to the paper remarking that the previous week she had been holding hands with her husband in a movie house, and was glad they

escaped the watchful eye of the officer, who said he'd arrest heterosexuals he saw doing it too.

Since there are these effects from having such laws, then I would say that, though in theory they might be justified, in practice they engender such contempt for the law and the police in general that they cannot morally be made. Whatever good effect there is in "going on the record against morally wrong acts" can be achieved with an advertising campaign warning of the danger or wrongness of the acts; and this avoids the bad effects of having a law on the books which cannot be enforced without injustice.

As to methods of enforcement, the following can be said:

# Conclusion 16: It is morally wrong for the police to interfere in the private lives of the members, unless there is *prior evidence* that the person is probably violating a law.

I will discuss the right to privacy later, when I take up the rights of the member. That right involves the fact that a person has a right that no one else even know about something he did or some aspect of himself, whether the knowledge can be used against him or not. But we don't need that here; it is enough that, since the members are self-determining and have their own lives to live, then this self-determination is not to be interfered with unless there is some socially necessary reason for doing so; and hence, there must be evidence that a violation is probably being committed (or contemplated) in order for it to be legitimate to invade a person's private affairs. This, of course, is why search warrants are required in civil society; but it applies to *any* society. A member's locker in an athletic club, for instance, must not be searched just because the authority wants to know what is in it. For that matter, children's mail must not be read by parents unless they have *evidence* that suggests

that something untoward is going on in it.<sup>63</sup> However,

# Conclusion 17: If, in the course of investigation for one violation, evidence is uncovered about another, there is nothing morally wrong with using this evidence.

If, for instance, the police have a warrant to search a place for a murder weapon, and in the search they discover a cache of drugs, they may then arrest the person for drug possession. The reason is that they happened upon the evidence, and this is what their job is: to keep their eyes open and enforce the law when they discover evidence of a violation. The fact that they discovered it in the course of a search for something different is irrelevant.

# Conclusion 18: No member may morally be forced to testify against himself.

The reason is, first of all, that it is the authority's job to find out whether the members have violated the law, not the member's. Secondly, since a member will be unwilling to do himself damage, then requiring him to testify against himself (threatening him with punishment if he does not do so) will tend to make him lie, and his testimony unable to be relied on. Thirdly, since he will be tempted to lie, this incitement to do something immoral makes the authority

<sup>&</sup>lt;sup>63</sup>The evidence here obviously need not be strong enough to stand in a court of law; if parents have any reason to believe that their children might well be doing something wrong in secret, then they have the obligation to ferret it out. In general, children's right to privacy is much less than that of adults, because (a) they don't realize the full implications of what they are doing, and (b) they need to be taught what to do, especially in moral matters.

also guilty of his immoral choice, whether it happens or not.

This is true of *all* societies, not just civil society. It is *morally wrong* for a teacher to force a student to confess infractions of the rules of the class, for instance.<sup>64</sup>

# Conclusion 19: It is morally wrong to encourage the members of the society to act as spies on each other.

A member *may* morally report an infraction of the law to the authority so that the sanction can be imposed; but the members are *not* part of the police force; and it is not, therefore, their business to go looking for infractions. It is not necessary in a society that *all* infractions of the law be punished, but only enough of them so that the law retains its force, and that the people as a whole remain willing to obey and don't try to "beat the system." In general, if members happen upon violations of the law, they should be reported; but they

#### 5: Authority

296

<sup>&</sup>lt;sup>64</sup>Can the Catholic Church force members to name their sins to the priest in confession (as opposed to confessing something like, "I am a sinner")? Yes, *if* this is *necessary* for the priest to be able to set the conditions by which God erases the act as operative (i.e. if God in fact has said he will not erase the sin unless a representative of the Christian community as such knows of it and forgives it in the name of the community—always excepting cases where in practice this couldn't be done). I leave it to the Church to determine whether that condition is fulfilled; I think I can see a "loophole" in the way the pronouncement on the subject by the Council of Trent was worded; but I defer to those who know the subject better.

In any case, there are two differences between this and testifying against oneself. In the first place, there is no question of harm here, but just the opposite. In the second, the one hearing the confession is, as I said in discussing secrets in Chapter 5 of Section 2 of the fifth part, absolutely forbidden to act, once outside the confessional, in any way as if he had heard what the penitent said. So aside from the embarrassment of telling the priest what you did (and in circumstances, also, if you wish, that he doesn't even know who you are), there is no bad effect on the penitent at all.

should not act like police.65

Conclusion 20: It is morally wrong to tempt a member to disobey a law in order to catch him in the act.

This sort of thing is called *entrapment*, and is morally wrong because you can't assume that the violator would have violated the law if you hadn't held the temptation before him. Remember, people in the society don't necessarily have the common goal of the society uppermost on their list of priorities; they have their own lives to live. Anyway, if you, as the authority, present incentives for them to break the law, you are encouraging the thing you say you are trying to prevent; and that contradicts what the law is about.

The police's job is to see to it that the law retains its force and the people their collective willingness to obey, not that all infractions of the law receive the penalty. It may be that the practicalities of some laws' enforcement might necessitate "undercover agents" who don't appear to be police and could be *approached* by someone wanting to violate the law: for example, they could be dressed as prostitutes or drug dealers. But the point here is that they must not *initiate* the transaction by any provocative act.

My final remark on this topic is that (supposing the members not to be in rebellion against the authority) if a given set of laws can't be enforced without excessive zeal on the part of the police, then there is something wrong with the laws. I think, for instance, that the

<sup>&</sup>lt;sup>65</sup>In cases of great danger, such as that of terrorist attacks, asking citizens to report suspicious activity can be justified on the grounds that by keeping their eyes open they are not actually violating anyone's right, and the police and such have not the personnel to be able to be in enough places to stop an attack. But actual snooping by citizens (such as examining trash cans) should not be allowed.

"drug war" in our country is a beautiful example of this. Doing drugs is definitely harmful to the people who do them, and to all those connected with them. But outlawing this practice just does not work; and furthermore, simply makes the drugs high priced and gives the dealers enormous profits.

The thing to do is (a) make all these things legal, (b) forbid all advertising of any of these substances (including tobacco and alcohol), and (c) engage in an advertising campaign honestly showing the harmful effects and attempting to counter the social attitude that it is "cool" or "grown up" to use these things. That has a chance of working, and is consistent with civil society's function, which does *not* include saving people from their own deliberate folly; the war against drugs treats people as children, and ultimately will fail. (The reason advertising should be forbidden, by the way, is that it states as an esthetic fact that these things are good for you, when in fact they aren't. Public telling of lies can be forbidden, because they violate the public's right to know the truth.)<sup>66</sup>

Now then, the *judicial* function of authority is twofold: (1) imposing the sanction, and (2) settling disputes among the members which they cannot settle themselves. Again, this is normally thought of in terms of civil society, but it occurs in any society; and this must be kept in mind.

As to the first of these duties, it is up to the authority as judge (a) to discover whether the violation actually occurred or not, (b) to assess the circumstances of the violation and the violator so that the lightest punishment (within the range necessary for the members to know how serious the law is) consistent with preserving the threat as credible can be meted out.

<sup>&</sup>lt;sup>66</sup>Bringing social pressure to bear, while not easy, is possible, as is shown in the largely successful campaigns against smoking.

### Section 3: Society

There is no requirement in the nature of this function that the case be decided by a jury; in fact, it often happens that jury verdicts are another instance of "dumbocracy," and are travesties of retributive justice. The idea of trial by jury in English and American law is that members of one's own class are less likely to be prejudiced than members of a different one (which is why the jury is supposed to be "of one's peers" or equals). Insofar as this prejudice is not likely to happen, then it is obviously better to have a wise person be the judge than any number of randomly selected members of the society. Furthermore, juries, not understanding that the *sole* grounds for punishing the offender is the avoidance of sending a message that it is all right to commit the crime, are apt to be vindictive in assigning the punishment.

As to the second of the judicial duties of authority, settling disputes, it can happen in a society that two people both have a right to something, but their rights contradict each other. Since no right ever is superseded by another right, as I said in Chapter 3 of Section 1 of this part, then there is no way in *commutative* justice that the dispute can be justly resolved. But since the society can demand *cooperative* action from the members, then for the sake of resolution of the dispute, the authority can require that one of the members give up some or all of his rights to the other, deciding which of the two suffers the least damage in doing so.

Conclusion 21: It is morally legitimate for the authority to force a person to give up a right when this is the only way to settle disputes involving rights that contradict each other.

I mentioned in the preceding section while talking about property that this at present is not open to conflicts of rights between civil societies, because there is no overarching world society at the

moment (the United Nations is a discussion group, not a true authority). Hence, the only form of justice that can at the moment be exercised between nations is commutative justice: the recognition and defense of rights. But in Israel, as I mentioned, both the Palestinians, who were dispossessed of their homes by Israelis of the preceding generation, and the Israelis of the present generation living in those homes, have rights to the property in question; and there is no way in commutative justice to settle this dispute. One or the other nation must give up its right to at least some of the property. But there is no way to impose this duty on any nation, since there is no world authority and no world society demanding international cooperative (as opposed to economic) activity.

These, then, are the three basic functions of authority in any society. There remain brief discussions on the authority's responsibility in the society, its rights, and the various forms the authority can take.

With respect to the responsibility of the person in authority, first of all remember that responsibility is not the same as the authority's *duties*, which in fact I spelled out above. Responsibility, as I said when dealing with morality and the choice in Chapter of Section 1 of the fifth part, is "answerability," meaning that you are responsible for what you can control by your choice.

First, then, since the authority issues commands which (unless they command something morally wrong or violate a right of the member) *must*, morally speaking, be obeyed by the member (even if they are stupid commands), then it follows that *the authority is responsible for everything the members do in obedience to his commands.* That is, he is responsible for actions of people other than himself, because it is *his* choice which controls what *they* do. Thus, in spite of the fact that the authority must sometimes defer to the judgment of his wise advisors, as we saw earlier, he is still the one who makes the

choice of the society, and so he is the one responsible for what is done in carrying out his orders.

Secondly, the authority is responsible for the acts he could have prevented by passing a law against them. This also applies to acts not done that would have been done had they been commanded. Thus, if some act detrimental to the common goal of the society (or the common good of the members) is being done by some members, and the authority passes no law to put a stop to it (or doesn't enforce one which was passed) then he is responsible for the damage done. The members doing the act are also responsible; but this does not absolve the authority from responsibility. Insofar as a given act could have been prevented by either of two people's choice, then each is fully responsible for the act. This is called "joint responsibility." The point is that the responsibility is not divided half-and-half in this case, because it isn't the case that either could have prevented only half of the act; either could have prevented it altogether. Of course, it is the authority alone who is responsible for any harm that comes by the omission of an act that should have been commanded.<sup>67</sup>

Note that the authority is *legally* responsible for these actions and omissions even if he doesn't know they are happening; because, since he has the duty to see to it that the society works toward its common goal and protects the common good, he "ought" to know what is going on. This supposes that "the normal person" in authority could know of it (i.e. if it could only be known by excessive policing, then this absolves the authority from even legal responsibility). Of course, the authority is not morally responsible for what he did not in fact know.

The authority is also responsible for violations of the laws insofar

<sup>&</sup>lt;sup>67</sup>The authority is not the only one responsible for an omission when there is a member who knew that the law needed to be passed and did not tell the authority.

as this is due to lax enforcement or too light sanctions. This should be obvious. But the authority is *not* responsible for what the members do in violating the laws if the sanctions are sufficient and the enforcement is reasonable.

As to the rights of the authority, the most obvious one is *the right to make and enforce laws*. That is what the authority's basic function is. This, of course, implies *the right to be obeyed*. I don't think these need spelling out; it obviously contradicts the relation the authority has toward the members if they refuse to obey him, since he can't do his job without their willingness to do so.

Secondly, the authority has *the right to be respected*. Insofar as he is despised by the members, then they will be inclined to disobey him. And in fact, the authority itself is the status of respect, because it controls part of the lives of the members. Hence, not to show the *person* in authority the respect due to his status is to subvert the relationship that actually obtains between the authority and the members. Thus, laws against "contempt of court" or "contempt of Congress" are legitimate.

Note that the respect due to the people in authority is *not* due because of their sterling human qualities, *but simply because they are the people who hold that status.* In that sense, it doesn't matter what they are as individuals; as long as they are in office, they have a right to the respect due to the office. Clearly, it is better, as I said, that the people in authority be leaders (and also people of probity and integrity), so that as persons they will evoke respect from the members. But even if they are puny as humans, they still must be respected by the members because of their status.

Thirdly, as I said, the authority has *the right to be informed* about what is relevant to laws to be issued, and also about violations of laws that members happen to have discovered (though not through spying on other members). If he does not have this information, he

### Section 3: Society

cannot do his job of making the proper laws or enforcing them.

Fourthly, the authority has *the right to impose sanctions* on those who violate the laws, and to alter and even commute the sentences to fit individual circumstances. This is simply the implied right to carry out the role of authority.

Finally, for the same reason, the authority has the right to force members to agree to his settlement of disputes between them when the dispute cannot be settled privately.

Of course, the rights have their limitations; none of the authority's rights extend beyond the common goal or the common good of the members. Authority *may* morally go beyond these limits in certain cases, but only in an advisory way, as one who is a leader in the community. But when the limits of the authority are exceeded, the members have no *obligation* to follow the suggestions of the person who (also) happens to be in authority; he is just a wise member of the community in this respect.

As to the forms of authority, there is not, as I mentioned, any form that is the most proper one by nature; each has its own advantages and defects.

First, there is what is called *anarchy*, which is no authority at all. The only society this works in, however, as I mentioned, is marriage, where the partners already explicitly love each other.

Second, there is *monarchy*, in which one person holds all of the authority. He may delegate some of his powers, but he is the one who has them, and can recall what he has delegated.

The advantages of monarchy are that it tends to be efficient, and with a good, wise monarch, to be humane and adaptable to the needs of the individual members. The monarch can temper the force of the laws with privileges when the common good or unusual circumstances warrant. The disadvantages of monarchy are primarily in finding a wise and good monarch who will remain good. Even

## Part Six: Modes of Interaction

Solomon, after all, had his problems, not to mention David. In subordinate societies under the basic control of civil society, this might not be too difficult; but when the monarch has all the authority of the whole nation, there is a strong tendency toward corruption, if for no other reason that some compromise with ideals is necessary to make society function, and this tends to deaden conscience—and the result is tyranny. Further, in a complex society of any size, the monarch himself cannot handle all the duties of authority and must delegate them; and then the authority in fact becomes bureaucracy, not monarchy. And the final difficulty is that of the removal of the monarch when he no longer functions for the benefit of the society and that of finding his successor. Strictly speaking, monarchy implies authority for life, with hereditary succession. This will almost certainly result in a disastrous government several generations after the good, wise monarch.

The difference between monarchy and *dictatorship* is not necessarily that the dictator is a tyrant (Francisco Franco seemed to have been benevolent, for instance), but that he has acquired the authority in an extra-legal manner. The advantages and disadvantages of dictatorship are the same as that for monarchy, except that, since the dictator usually has come into authority by force, the tendency toward corruption and tyranny is much greater.

Thirdly, a *bureaucracy* is usually a quasi-monarchical or quasi-oligarchical form of authority in which there is one person, or a small group of people, with the power to "set policy" or choose the broadest and most general goals of the society; the next lower level of authority takes these goals and sets "objectives," or sub-goals dealing with the general means of implementing them, and hands these down to the next lower level, which does the same thing down the line, until there are no more orders to be given, but only the tasks to be carried out.

#### Section 3: Society

The advantages of bureaucracy are that it tends to be an efficient way (and often the only way) to govern a complex society, because each level has its own defined powers and these are circumscribed by the goals set for it by the level higher up. It also is humane, because within the limits of their authority, the people at each level are let alone to choose the means they see fit to achieve the goals; and if communications up and down the bureaucracy are wide open, then it can work very well indeed. Since the policy is set by those on top, changes in policy can be implemented in very complex ways rather quickly, with each stage shifting to adapt to the new goals.

The disadvantages of bureaucracy are, first, that it can be an efficient tool for tyranny, because those on lower levels are not supposed to concern themselves with policy, but with merely carrying it out. But, as we will see, every member, whether he is in the chain of command or not, must refuse to do things which are morally wrong, and must resist letting the society as a whole do what is wrong. Secondly, even though in itself it is humane, in practice it can be just the opposite, insofar as the people on a given level are interested mainly in protecting their position. They then become "typical bureaucrats," who never do anything *wrong*, but who never adapt themselves to exceptional cases, and instead of freely choosing to implement the goals of the level above, simply follow orders and don't think for themselves. For this reason, thirdly, there is apt to be a difficulty in information flow, because those who are trying to protect themselves tend to block anything which might make them look bad to those above them. Instead of responsibility, blame gets tossed around and disappears in the quicksand of the levels of command. Finally, since each level does have some authority, it is apt to resent the fact that it can't determine the policy that is set for it; or conversely, when the person in the higher stage is one of those busybodies who has to see that his orders are carried out in the *way* 

he wants them done, then those at the lower level have authority in name only, and wind up being nothing but the slaves of those on the higher level.

Fourth, an *oligarchy* is a small group—some sort of committee—that holds the authority. Most firms of any size are bureaucratic oligarchies, with the board of trustees setting the policy, which the president then implements as a kind of subordinate bureaucratic monarch. Historically, there is a difference between *aristocracy*, or rule by the nobles (people chosen for their wisdom and virtue) and what was called oligarchy, which was rule by the rich.

The advantages of oligarchy are that there is less danger of a capricious use of authority than with a monarchy, since the oligarchs must reach a consensus before they can act. Oligarchy is therefore more conservative than monarchy, and tends toward greater stability in the society.

The disadvantages of oligarchy are first, that it is less efficient than monarchy; and if the number of oligarchs becomes large, it can freeze the society when immediate action is needed. Second, the need for consensus (or a majority agreement, at least) among the members can mean that the least wise action is taken, because it is the only one that the members can agree on. Third, there is a difficulty in finding the wise oligarchs, since there are more people needed to govern than with monarchy. Fourth, there is a stronger tendency even than with monarchy for the policy set to be the one that is most advantageous to the governors than to the governed—because the interest of the governors would be the thing on which the oligarchs would agree most often. Finally, there is the danger of factionalism if the number of oligarchs is large enough.

Fifth, a *republic* is a kind of oligarchy in which the oligarchs are chosen by the members of the society, either by all or by some smaller group (such as the men or the property owners). Usually the

selection is not for life, and so the oligarchs can be removed by those who chose them, and so they are supposed to "represent" them or "be responsible to" them in some sense.

This form of authority gives the members an indirect control over the commands issued to them, and so has the advantage of tending to have more willing members (since they can change the oligarchs).

It has, however, a modified form of the special disadvantage of a democracy, that demagogues can be chosen to be the oligarchs. A demagogue is a person who can persuade masses of people, and so can sway them to his own ends. There is also a tendency toward what Mill called the "tyranny of the majority," since the oligarchs are chosen by the majority to represent the majority's interests; and insofar as those interests come into conflict with the rights of other members, a republic can be oppressive. Further, the majority's interests may or may not coincide with the common goal of the society, and so can lead it astray.

Finally, there is *democracy*, which is authority that is left in the hands of the members themselves, deciding to give orders to themselves by majority vote. In a republic, the people do not actually *have* the authority, but choose those who are to be in the status; in a democracy they actually have it.

The advantages, such as they are, of democracy are that the people tend to be willing to obey, because they are under the illusion that what the majority wants is best for the society, and they feel that they have helped make the laws.

But the disadvantages of democracy are legion. First, it is extremely inefficient, since the whole society must be involved in every piece of legislation and every judicial decision. Secondly, it takes up the time of the members, giving them little to spend pursuing their own goals, or even carrying out the commands they pass. Thirdly, since the people have no special wisdom, it can be

extremely unjust, since there is no way in a pure democracy to curb the oppression of minorities by the majority. Fourthly, since the masses of members are easily swayed by demagogues who tell them what they want to hear and make contradictory promises, it tends to be at the mercy of these people, and to follow every wind of faddish thought; and, as Plato said, very easily degenerates into a tyrannical monarchy under the demagogue, who insinuates himself into absolute power.

Churchill said that democracy was the worst form of government, except in comparison with all the others. Churchill was a great statesman, but a bit of a benevolent demagogue himself. The mere fact that this silliness is remembered of him shows how easy it is to pull the will over people's eyes by a clever phrase.

If this list of forms of government is discouraging, this is no accident. Given the fallen nature of human beings I mentioned in Chapter 5 of Section 4 of the third part, *there is no system of government that is such that it is likely that the common good will be maintained and the common goal advanced.* Utopians are always tinkering with the system, not recognizing that changing the system is only going to shift the difficulties to a different area. Human ingenuity in subverting systems which in themselves are benevolent is far too great to suppose that a system can be devised which is tyranny-proof.

What is to be done, then?

The answer is that *the spirit of the people to be governed* should determine the form of the government. Some people function well under a monarchy, some under an oligarchy, and others under a republic. I must say, however, that if the number of members is very large, very few communities are such that they can be governed democratically.

This is a book of philosophy, not politics, and having said what I

### Section 3: Society

just said, I am not going to try to spell it out. My own inclination is that a kind of bureaucratic republic seems to be the least dangerous form of civil society; but that may very well be because I live in one—which has plenty of very serious flaws, God knows.

But there is the question of how the form of the authority gets decided on. First, a definition:

# The *constitution* of a society is the form the authority has in that society.

It may be a written document, as in the United States, or it may "just happen" or evolve, as in England.

At the formation of a society, since there is no "natural" constitution, as I said above, the members are free to choose their own constitution (which, in certain small societies such as clubs, are called the "bylaws"). *But this freedom exists only at the formation of the society.* Once the constitution is decided upon, the members have no right to change it, unless means for altering it are built into the constitution itself. Changing the constitution of a society (other than by constitutional means) is in fact destroying the society and replacing it with another.

The reason for this should be obvious: it is of the nature of authority to tell the members to do what is not to their short-term advantage to do, and to threaten punishment if they don't do it. But since people want to be free, then if "government is by consent of the governed," they will tend to want to replace the constitution as soon as laws are passed which make a significant number uncomfortable—and the result is anarchy. Many nations, including Argentina, suffer from this attitude. The people think that government is supposed to express their will; and they don't want to be forced to do anything that isn't their will (i.e. causes

inconvenience); hence revolutions occur frequently and the government can't get the country out of its disastrous condition.

Hence, "governance is by consent of the governed" *only at the beginning*; and even there, most of this consent is *tacit* consent, because in most cases of the formation of a constitution, the people actually don't vote on it—and even if they do, it is only a majority of the people who want it, and the minority who voted against it are assumed to accept it, though not perfectly willingly.

After the constitution has been formed, the people *must* obey the authority, unless it becomes a blatant tyranny, violating their rights to such an extent that the Double Effect would justify a revolution destroying the society itself. But in order for the five rules of the Double Effect to apply, the tyranny must be widespread and not able to be got rid of in any constitutional way, and there must be hope of success from the revolution, including a reasonable expectation that the constitution which will replace the one that is being destroyed will be better.

In any case,

Conclusion 22: A constitution is legitimate if there has not been from the beginning a rebellion against it on the part of a significant number of the members.

You can't please all of the people all of the time; and so there are bound to be one or two members who actively don't like this form of government and fight against it. Hence, even *de facto* governments which come into power by revolution or by usurpation *are legitimate governments* after a relatively short time, if it is seen that the people accept the government, in the sense that no significant attempt to overthrow the new regime has been occurring. Of course, the actual absence of armed conflict is not necessarily a

sign of acceptance of the government by the people, if the new government is a police state which crushes the slightest hint of dissent—as seemed to be going on in Kuwait, after it was taken over by Iraq.

## Chapter 6

## The member

the member? What are his duties, responsibilities, and rights, and so on?

Ordinarily, of course, a person is not what they call a "charter member" of a society: one who was there at the beginning, and therefore one of those whose at least tacit consent accounts for the constitution of the society. Most people, therefore, who join societies either accept the already constituted form the authority takes, or don't join.

There are, however, societies that are not joined freely: those societies which are unavoidable because of our human nature, such as the family and civil society. You are, as Heidegger says, "thrown" into the family, and there is nothing you can do about it; and similarly, you are "thrown" into a nation, and cannot get out of it unless changing citizenship is built into its constitution. In marriage, you freely join, but you can't do anything about certain aspects of the form the marriage takes.<sup>68</sup> But I will discuss these specific

<sup>&</sup>lt;sup>68</sup>There is also a society which a person can't avoid belonging to, if he knows the facts: the Catholic Church. The necessity of belonging to this society can't be established philosophically, of course; but if redemption is necessary for human beings, and if this comes only through the community that Jesus set up, and if the Catholic

societies later.

Once in a society, there are certain obligations that a member has that don't depend on the particular common goal or constitution of the society, but simply on what is implied in the fact of being a member of any society. Since if you disobey these obligations, you are acting inconsistently with yourself as a member of society, then these are *moral* obligations.

First, of course, there is the obligation to obey all the laws of the society.

This means that you have the general obligation to obey the laws, not that it is morally wrong to disobey one or another in certain circumstances. The laws, remember, were passed so that the common goal could be accomplished and the common good (the rights of the members) could be preserved; but laws, as requiring uniformity of action, necessarily will be general, and not cover circumstances when obeying the law is either silly or even acts against the common goal or common good.

A nurse told me an instance of this once when I was teaching medical ethics and had just made the point above. In a hospital where she worked, there was another nurse in the emergency room, when a patient who had taken poison was wheeled in, barely conscious. There wasn't a doctor there at the moment, so the nurse called the poison center and told them what the patient had ingested,

Church is that community, then to escape from the eternal consequences of sins you have committed, you need to belong to this community. The teaching of the Catholic Church is, however, that those who are sincerely trying to do God's will according to the facts as they understand them, are actually saved through the Church, and "belong to" it in some sense, because if they are sincere and knew what the facts really were, they would belong to it. So those of you who don't think that the Catholic Church is the true way to worship God needn't feel that in the mind of Catholics you are "damned infidels."

## Part Six: Modes of Interaction

and was told to administer syrup of ipecac to make him vomit. She said, "Is this a doctor giving me this order?" and was answered, "No, there aren't any doctors here; but if he doesn't get ipecac, he'll die." But since the law said a nurse must not administer medicine without a doctor's orders (a very good law, in general), she fussed around trying to find a doctor; and while she was doing this, the patient lost consciousness, after which it was too late to give him the ipecac, and he died.

Conclusion 23: In cases where obeying a law would be contrary to the obvious reason why the law was passed, it is not immoral to disobey.

You have to be a little careful not to read your own opinion into "the obvious reason why the law was passed"; but, as can be seen from the rest of this book, I don't buy the deconstructionists' argument that anyone's notion of "the obvious reason" is as good as anyone else's; there *are* obvious intents of laws which are discoverable by anyone of good will. In any case, if your own bias is so strong that you mistake the obvious intent of the law and disobey it based on this, you are not morally guilty of disobedience.

What I am saying, of course, is that the distinction people make between "the letter of the law" and "the spirit of the law" is valid. You are only *bound* by the letter of the law, in the sense that you don't have to do more than this, since the law is supposed to be the minimum restriction on our freedom consistent with accomplishing the common goal. So even if "the spirit of the law" obviously goes beyond the letter, you still don't have to do more than you are explicitly told. But if obeying the letter of the law makes you do something foolish, and the spirit of the law did not intend this foolish act, then you can obey the spirit and ignore the letter.

### Section 3: Society

All this really means, however, is that it isn't *immoral* to do this. Sometimes it also means that the authority should let you escape the sanction on the law, and sometimes it doesn't. If, for instance, you run a red light when there is no one around (you think) for miles, you are not being immoral, because the obvious intent of the traffic signal is to regulate traffic, and at the moment there is no traffic. Nevertheless, you *did* disobey the law, and when the policeman pops out from behind the billboard, you won't escape the sanction by saying, "But officer, there was no one coming."

The reason, of course, why it is not unjust for the sanction to be imposed is that if the traffic laws said, "On approaching a red traffic signal, stop unless it seems to you that the coast is clear," you would find that traffic was not regulated, since different people have different ideas about what "no one was coming" means. Hence, as I said, the law has to be obeyed "practically all" the time, and it wouldn't be if it didn't say you had to obey it all the time. So even when it isn't immoral to disobey a law, you still have to be willing to pay the temporal penalty if you are caught.

If a person, however, disobeys frequently, then even though each individual instance may not be morally wrong, the *effect* of the series of disobediences makes the person a "scofflaw" and changes the morality of what he is doing. In effect, the person is saying, "I will obey the laws when it seems to me reasonable to do so; if it doesn't seem reasonable, I won't obey."

But the supposition of a law is that it *won't* seem reasonable for you to obey it—in fact, it won't *be* reasonable (in the sense of advantageous) to obey, because the act is a cooperative act, not one that is of any particular benefit to you. When you join any society, you are declaring your willingness to cooperate for the common goal and the common good; and it is a direct contradiction of this choice to "cooperate" only when it seems proper to you to cooperate. You

are then not obeying the authority, the authority is obeying you (because tacitly you are demanding that all the laws be in your own interest).

Hence, the scofflaw is saying, "The society has no right to tell me what to do," when in fact the very essence of society is that the authority *has* the right to tell you what to do. This is why you must obey all the laws, and can use the distinction above in only very rare instances.

But since most laws will seem foolish to those who have to obey them, we can say this:

Conclusion 24: The moral obligation to obey all the laws extends even to foolish ones.

There are, however, situations in which you *must* disobey laws: those in which the laws are immoral or unjust.

An *immoral law or command* commands a person to do what is morally wrong (or against his conscience).

An *unjust law or command* commands a person to do what he has a right not to do, even though it is not morally wrong for him not to do it.

Every immoral law is an unjust law, because obviously a person has an absolutely inalienable right to avoid doing what he thinks is morally wrong. But since the basis of society's expecting you to obey is the fact that you would be contradicting yourself as a member (and so would be doing what is morally wrong) if you didn't, then obviously, the society cannot expect you to obey if what it tells you to do is morally wrong.

And, of course, this means "morally wrong according to the information you have" (your conscience, as we defined it in Chapter 6 of Section 1 of the fifth part).

# Conclusion 25: Any law that commands a person to do what is contrary to his conscience is not a law and must not be "obeyed."

The reason, of course, why you *must* not do what it tells you to do is that you must never do what as far as you know is morally wrong, for the reasons I spelled out in Chapters 3 and 4 of Section 4 of the third part. Hence, no matter what the sanction is—even if certain death follows your disobedience, you may not obey an immoral law.

And this is why the Eichmanns of this world cannot use, "I was only following orders" as an excuse for doing something morally wrong; and they can legitimately be put on trial and condemned for participating in "crimes against humanity," even if their society told them that they had to perform these acts or they would be killed. Morality does *not*, as I said in Chapter 3 of Section 1 of the fifth part, depend on the nation or the culture you live in, but on what is consistent or inconsistent with the *actual reality you have*. And that is why it is perfectly legitimate for people of another society and another culture to try and punish people for atrocities against the human race, in order to keep people from thinking that if their culture is willing to be inhuman, they can commit these acts with impunity.

But since people can make mistakes about what is morally wrong and what isn't, "crimes against humanity" must be such blatant atrocities that only a deconstructionist would have any qualms about declaring them such. It is not, for instance, a crime against humanity

if a given society does not have a free press, however much we in America might think so.

Now a merely unjust law is one which does not command you to do something that it morally wrong, but simply something that you have a right not to do. There is nothing morally wrong, for instance, with my not using a public library; but if I am Black and the law says that Black people may not use the public library (which is supposed to be for citizens), then the law violates my right as a citizen to use the citizens' facilities. Similarly, in a small society, it is not immoral for a secretary to make the coffee for the office in the morning; but if it is not part of her job description, it is unjust for the employer to command her to do it.

# Conclusion 26: An unjust law must in general be disobeyed; but it may be obeyed when the Double Effect applies.

This is actually a generalization of Conclusion 8; whenever a person is commanded to do something unjust, the society is exceeding its authority, and so the law is not a law. It must in general be disobeyed, because the authority must not be allowed to do what is contrary to the common good. But if, as I said under that conclusion, the only thing that is going to happen is incurring the sanction with no prospect of changing the law, it may be obeyed.

Rosa Parks was doubtless using the Double Effect the other way when she stayed in the front of the bus in Alabama on that fateful day; she was willing to face the penalty in order not to have to have her right violated. At the time, the attitude of the society was volatile enough so that, as it happened, what she did sparked the whole civil rights movement, which led to the abolition of unjust laws like the one she disobeyed.

I should point out, however, that there is a serious danger to

disobeying unjust laws, as the civil rights movement demonstrated. To the extent that civil disobedience is successful, it gives the impression that *unpopular* laws may be disobeyed and changed by civil disobedience—and this undermines the authority in society, and in the limit can destroy the society altogether. The reason why it undermines authority is that people in general don't make the sophisticated distinction between laws that violate rights that we actually have and laws that violate that "right" that we think we have to do what we want; and so people will claim all sorts of silly "rights" and engage in civil disobedience to get the laws changed in their favor. We are suffering from this at the moment.

I do not want this to be construed as saying that what Martin Luther King, Jr. did was morally unacceptable. The laws *were* in fact a blatant injustice against the Blacks, forcing them to act as if they weren't really human beings, and as if they were "citizens" only to the extent that the society could get something out of them. But in cases like this, *the probable consequence of the undermining of authority when it is acting legitimately must be taken into account* in assessing whether the fifth rule of the Double Effect is fulfilled.<sup>69</sup>

The second obligation the member has is to provide information to the authorities dealing with laws under consideration, and also dealing with infractions of existing laws that he has come upon (and hasn't gone looking for). Yes, the member has an obligation to "rat" on other members who are violating the laws, because every violation of the laws is an attack on the society, and the members are supposed to be cooperating for the common goal and the common good, not conniving in its frustration. Once again, using the Double Effect, one may withhold the information in cases where nothing good will be

<sup>&</sup>lt;sup>69</sup>Of course, Dr. King's willingness to suffer the penalty for violating the unjust laws militates against this misinterpretation.

accomplished by providing it, and there are bad effects likely in doing so. If the only thing that is going to happen is that you are going to get the reputation of being a troublemaker, then you can keep your information to yourself.

If you happen to have wisdom, you have the obligation also (though a considerably weaker one) of giving the authority the benefit of your wisdom. The reason the obligation is weaker is, of course, that everyone thinks he is wise; and so the obligation is really incumbent upon those the authority *chooses* to be his advisors.

Now then, once you have supplied the information (or the advice) to the authority, *your obligation is discharged*, and you are still under the command of the authority. So if he doesn't listen to you and passes the foolish law, you still have to obey it, just like any other member.

The fact that the member has an obligation to report infractions of the law is the reason for the following conclusion:

# Conclusion 27: It is morally legitimate for the authority to force a member to testify against another one.

I don't think this really needs a great deal of elaboration. What it says is that the "subpoena" (lit. "under penalty") power of the authority is legitimate. You can't be forced to testify against yourself, but you can be forced to testify against someone else. This right to force testimony against others, however, does not apply to what are called "privileged communications," between doctors and patients, lawyers and clients, and confessors and penitents, because of what I said in Chapter 5 of Section 2 of the fifth part about the disastrous effects of such testimony. It is also the case that one partner in a marriage cannot be forced to testify against the other on the grounds that this completely subverts the marital relationship, which is not to be sacrificed on the altar of the benefit of society. It also, of course,

invites perjury; the love between husband and wife guarantees that testimony forced by one against the other will be unreliable; so even if it could morally be done, it would be of no practical use.

The third obligation the member has is to respect those in authority. He must not speak disparagingly of them or bring disgrace upon them while they are in office. This is not to say that he must pretend that they are perfect *persons*, but he must not make it harder for the other members to obey by holding the authority up to ridicule.

This goes against the grain in our democratic society; but its deleterious effects can be seen everywhere. People don't tend to obey those they despise; and since the society can't exist unless the people obey "practically all" the time, then one who promotes disobedience is doing what is morally wrong.

In a democratic republic such as ours, where those in authority are elected by the people, facts relevant to choosing them must of course be made known; but (a) this should not necessarily be done all during the time they are in office, and (b) it should be done in a respectful manner. In this regard, the posturing of the members of the Senate toward each other (even when it is clear that they have no use for what the other stands for) is not only perfectly proper, but laudable and to be imitated.

The member also has the obligation, as I said before, to *accept* sanctions imposed upon him for violations of the law, even in those cases where it was not immoral for him to choose to violate the law. He also has the obligation to *accept the authority's judgment in the* settlement of disputes, and not carry on the dispute after it has been decided, even if the decision went against him.

This last is not to be taken to mean that the person cannot appeal the decision, if there is in the constitution a process for doing so. But once the final decision is made, it must be accepted.

#### Part Six: Modes of Interaction

Note that this only deals with disputes between members. There are also civil cases that question the justice or morality of the laws themselves; and it does not follow that if a law is immoral or unjust, and the courts determine that it shall stand, the issue must be accepted. It must not, because the mistaken judgment of the court then simply confirms the authority in doing what is morally wrong; and the authority must be prevented, so far as is possible, from doing what is morally wrong.

Conclusion 28: Immoral and unjust laws must be changed; the only time when they can be allowed to stand is when by the Double Effect further attempts to change them would only result in something worse.

Aside from the obligations toward the authority, members also have obligations to the other members and to the society as a whole. The obligation with respect to each other is *to have harmonious relationships among themselves*. Since the members are cooperating, and since cooperation is that much more difficult between enemies, the members must make efforts to see that the conditions for cooperation are present; and this means positive attitudes toward each other.

This does not mean, of course, that members must like each other; this is desirable, but, since our emotions are not completely under our control, not in practice possible. But they must refrain from showing dislike or making pejorative remarks about other members.

In one sense, members of a society are more than brothers and sisters to each other, because brothers and sisters are simply "thrown" together with no say in the matter, and without any *a priori* common interest or common goal to achieve. That much

misunderstood "brotherly love," which is ordinarily taken to be a kind of "natural affection" that so many brothers and sisters feel guilty at not having, is really the learning to live with someone who is "just there," and in many ways is a rival for the benefits that one would like to have exclusively for oneself. Brotherly love is really acceptance of the reality of other persons with their own independent interests and the recognition that you are not in fact the center of the universe. If brotherly love includes emotional affection, this is fine; but it isn't the essence of the relationship.

But in a society, there *is* a common goal which all share and toward which all are working together; hence the relationship between the members should be more than mere acceptance of each other, but a definite positive attitude toward each other; and it is this attitude, of course, that forms the community that is underneath every society.

Connected with this is the avoidance of invidious comparisons with each other in terms of who contributes most and who receives the most benefits from the society. This pretends that the basic relationship in the society is the economic one, where compensation for services rendered is the order of the day, rather than the cooperative relationship, in which justice is distributive justice, not commutative justice.

As to the relationship of the member toward the society itself, since in a secondary sense his reality is that of being a member of the society he has the obligation *not to act in such a way that he brings disgrace upon the society*.

There are those who resent the fact that they are members of the society and want to be accepted "for themselves as individuals," not as "spokesmen" for the society. I remember a nun in great indignation saying to me, "Every time I do something or say something, people think that it's the whole congregation acting, not

just me." I answered, "Then why are you wearing that habit?" The point is that the way people thought was correct: it *was* she who was acting, but it was not *just* she. That is, it was correct in a secondary sense, but correct nonetheless. How is the congregation to act except through its members? And when anyone who is recognizably a member of the congregation acts in any way at all, the whole congregation is acting in that member's act. Of course, the member is acting for herself too; but she can't escape the fact that she is *also* a member of the congregation.

This, I suspect, is really why many nuns have forsaken their habits and dressed in a way indistinguishable from other women. They don't want to be recognizable as members of their order, so that when they act people will take their actions as *only* the actions of themselves as individuals; but in so doing, they have rejected that aspect of themselves which is their membership in the order; and since one of the reasons for the existence of Religious orders is to "witness" Christianity in the world, they are, to the extent that they are *not* recognizable as nuns, acting against one of the main purposes of the congregation.

This business of acting with decorum is connected with the *responsibility* of the member in society. Just as the authority in society becomes responsible for other people's actions in addition to his own, so the responsibility of the member is not simply that his own actions and their consequences are his.

In the first place, the member *is not morally responsible* for anything he does in obedience to a command which is not either unjust or immoral. If the command is foolish but not unjust, he must obey it, as I said in discussing his duties. Therefore, *he is not the one who is morally in control of what he does.* The responsibility for what he does lies with the authority, because the authority and *not* the member is the one who can morally prevent the act by his choice. In

that respect, belonging to a society relieves one of many responsibilities.

I hasten to add that a member can become responsible for what he does under orders if he knows some information relevant to the order and does not inform the person in authority. In that case, the information might have made the person give a different order, and so the member to that extent has control over what he is told to do. We will discuss this more at length shortly.

But this absolution from responsibility because one is under orders is as far as most people go. In fact, some of the nuns I spoke of earlier also want to engage in "discernment" with their superiors, so that both together can discover what the "Spirit" wants for the nun. But in practice what that amounts to is that the member is manipulating the authority into commanding what she wants to do, not what the congregation as such needs to do. This "collegiality" is a subversion of the whole essence of society; it pretends that the members of the Religious order are like the Bishops, each of whom is the direct emissary of Jesus, and precisely not subject to anyone else. And what this "allows" the nuns to do is "take responsibility for their own acts." Well, in fact they don't have responsibility for their own acts; the fool in authority who goes along with them still has the responsibility, because she could have said, "We'll have no more of this nonsense, Sister; we need a math teacher in our school and you have a degree in math; we are not going to hire a lay person when you are available." This "taking responsibility for their own acts" is a pretense and a sham, not a reality.

Of course, if a person *dis*obeys and command, he is responsible for his act and all its consequences, including the consequence of the undermining of authority and the harm to the society which disobedience implies.

As I said, if the command is unjust or immoral, the member must

disobey. He is responsible for what he does in disobeying, but is clearly not morally *guilty* of anything—even of disobedience; because morally speaking he couldn't prevent it. He is morally *praiseworthy* and responsible for all of the good consequences that flow from standing up to an unjust authority. That is, in fact, why Martin Luther King, Jr. is held in such high esteem today.

If a member refuses to give the authority information or wisdom he has, he then becomes responsible for the command and its consequences, because he could have prevented its foolishness by informing the authority. Here is what I alluded to above. The authority is also responsible for the foolish command and its consequences, of course; but in this case the member has a certain control over the level of ignorance of the one in authority. Many is the member who complains about the stupid things he has to do and says, "I could have told them this wouldn't work," not realizing that he then proves that, since he didn't tell them, the stupid thing he is doing is his own fault, as well as the responsibility of the one who ordered him to do it.

Note that if the member does inform the authority and a foolish command is issued (even one directly against the information or advice), the member is not now responsible for the command, since he does not have power over what the authority does, but simply provides information to him. He must then obey, and if he has to do silly things, then at least he is not now responsible for what he does.

The attempt by a member to "take responsibility for his own actions" is often an attempt to *abdicate the real responsibility he has* as a member for what the authority and the society does, and to hide behind the illusion of his own responsibility for his own act. That is, St. Ignatius' Jesuitical "blind obedience" is by no means as simple and irresponsible as it appears on the surface. The member's "conformity to the command of the superior" as best for himself

now is *after the fact of the command;* but he has a serious duty *before* the command is issued to see to it that the authority knows all he needs to know to issue an intelligent command. Further, Ignatius never intended obedience to be so "blind" that a person would do what was immoral or unjust simply because he was ordered to do it.

The point of "blind obedience" is that it is easier to obey once there *is* a command if you stress in your mind the reasons for obeying and ignore the reasons for disobeying. Since you have to obey anyway, this simply makes psychological sense, and is highly to be recommended in any society. The calumnies directed against this aspect of the Jesuit order are based on misinterpretation of the phrase itself, not on what Ignatius said in explaining it in his famous letter on obedience.

As to the rights of the member, it is obvious that he has all his human rights, except any alienable or relatively inalienable ones he freely gave up as a condition for joining the society. I mentioned in dealing with the kinds of rights in Chapter 6 of Section 1 of this part that freely joined societies can, if it serves the common goal, make it a condition of membership that a person give up some rights he has, such as the right to ownership, the right to marry, and so on. Of course, if something like the right to ownership is given up, then the society must see to it that it supplies what the person needs to live a human life and be able to pursue his goals. But beyond these, the member retains all his human rights. I mentioned earlier that a member has a right to follow his conscience. This is, of course, one of his human rights.

The member also has all of his *civil* rights. Civil society of course yields him his civil rights; and any lesser society is within the jurisdiction of civil society, whose function is to protect the rights of the citizens, and so the member never ceases to be a citizen by joining a society within the civil society.

This does not mean that the society may never do something to a member that the member has a right not to have done to him; because sometimes in defending a law or in defending other members against violations of their rights, the society can use the Double Effect and do harm to a person, or prevent him from following his conscience.

For instance, civil society may (and in fact must) morally prevent a woman from having an abortion, even if she thinks for some reason that she has a moral obligation to have one (as, e.g., if she doesn't know that the fetus is human and has found out that he is severely deformed, and thinks that she has an obligation not to have a deformed child). The reason is, of course, that the fetus *is* a human being, whatever the mother might think, and so *has* a right to life which must be protected.

Similarly, if a child needs a blood transfusion and the parents think, because of their religion, that such a thing is morally wrong, the society may take the child from their care temporarily and give him the transfusion, and then return him to them. Once again, following their conscience would violate a right of the child, and they cannot be allowed to do that.

Note that no society may force a person to *do* what is contrary to his conscience, but only *prevent* him from doing something he thinks he has a right or a moral obligation to do, because forcing a person to act contrary to his conscience would violate the first rule.

At any rate, we can say this:

Conclusion 29: A society may prevent a member from following his conscience, using the Double Effect, when some right of some other member would be violated by his doing so.

The member, of course, also has all the rights that belong to him

as a member of the society; his membership itself is the title to these rights. Again, he has all the rights that belong to his status in the society. For instance, a person in authority has the right to be respected by the other members.

The member also has the right *to be treated as an adult* if he is one, and not like a child under the tutelage of a parent. That is, even though people in authority must be respected by the members of the society, this does not allow them to look down on the other members or patronize them, or not listen to them or consult them. The respect due to them is due to the status, not the person; and every person should be respected as a person.

The member also has a right to *privacy*. I mentioned earlier that the society may not interfere with a person's life any more than is necessary to preserve the common good or attain the common goal. But it is also true that the society has no right to *know facts* about the individual that are not relevant to these ends, even if the facts will not be used against the person in any way.

Why is this? Basically, the reason is that each of us has a moral obligation not to lie: that is, not to deliberately communicate to others information that would lead them to take as a fact something that is not a fact. But this obligation not to lie also applies to facts about *oneself*, what kind of person one is, and so on.

But everything a person does gives others some kind of impression about the kind of person he is, and this impression can easily be misleading. In certain contexts, a person's behavior can give the impression that he is a saint, while in others, it can lead to the conclusion that he is a reprobate—neither of which may be the truth, the whole truth, and nothing but the truth.

Still, you have an obligation not to mislead others about who and what you are. But then, given what I just said, how can you keep your actions from misleading people? There are only two ways: (1)

Give them enough information all the time to correct misleading impressions, or (2) have it generally known that their information is incomplete, and that therefore they should not draw any conclusions from the observation of this aspect of your life.

Clearly (1) is not possible. In the first place, you would not know what information you would have to supply about yourself to correct false impressions. In the second place, everyone's having to hear all the details of everyone else's life would make social intercourse a supreme bore for everyone except a gossip columnist. No one *cares* about the details of your life; and anyway, we could never be sure you weren't lying by leaving out some particularly unsavory bit of information, and so even if you told all, we might still get the wrong impression.

So the only way you can be honest about yourself in your dealings with others is *to be able to withhold information about yourself*, so that others realize that what they know about you is probably only partial information, and does not provide sufficient evidence for assessing your character. Hence, any judgment they make about the kind of person you are is *their* responsibility, not yours. You have not misled them, precisely because it was understood in your dealings with them that they were not to take what you did with them to be the whole story about your life.

Note that this not only applies to concealing your indiscretions and immoralities, but also your virtuous acts. Apparently this was what Timothy was trying to do, but not with complete success, as Paul informed him in his first letter: "—And don't drink just water any more; drink wine every now and then to help your digestion and the health problems you have so often. Some people have sins that are obvious and cry out for punishment, and there are some that keep them quiet—and some people's good deeds are obvious too; but the ones who have secret virtues can't really hide them."

Of course, this right to withhold information cannot be used to deprive anyone else of any right he has. For instance, a doctor can't make a proper diagnosis sometimes without knowing facts about a person's sex life, which might involve seriously wrong acts. The person must then reveal them. This is actually why these communications are legally "privileged," so that the doctor may not be forced to reveal the information he was told by the patient. The same goes for lawyers and confessors.

The right to privacy as I have formulated it is much more radical than the traditional Scholastic view on the subject; but I think nonetheless it is a logically implied right from the moral duty to tell the truth about oneself. You either have to tell the whole truth, or you have a right not to tell everything, which means that no one can morally extort the information from you.

The Scholastics built their notion of the right to privacy on a right a member of society also has: *the right to a good reputation*. Since it can be difficult or even impossible to do what you need to do if other people despise you, then you have a right to have faults that might make people despise you hidden from them if the lack of that information does not violate any right of theirs.

Actually, the way I see it, this right to a good reputation follows from the previous right to privacy. If you can withhold information from others, then obviously you can withhold damaging information; and therefore, you have a right that others see only the good side of your life, since this does not imply that the bad side doesn't exist, but only that it's none of their business.

So we can say this:

Conclusion 30: The public has no "right to know" information about any person in a society, including those in authority or in "public life" unless that information is *necessary* to enable

### them to perform some act they have a right to perform.

This little survey of the rights of the member of society finishes the general discussion of society as such. We will now pass on to a brief look at the natural societies of marriage, the family, and civil society, and the economic society that is the firm containing employees.

Section 4 Societies

### Chapter 1

### Introduction

hat is going to be said in this section, of course, presupposes what was said on society in general in the preceding section. There may be some things that need to be repeated, but I will try to keep repetition to a minimum.

We are dealing here with specific societies, in other words, but, with the exception of the economic society of the firm with employees, we are going to be talking of what are called the "natural societies," those demanded for one reason or another simply because human beings are human. These are marriage, the family, and civil society; and we will see in what follows how each of these is necessary and in what sense.

#### Chapter 2

#### Marriage

raditionally, the society formed by marriage is called "conjugal society" (from the latin word *conjunx*, "spouse," or one who is "yoked together"—an interesting derivation); but the only place you hear that nowadays is in Theological treatises; so I choose to call this very peculiar society "marriage."

The first peculiarity about the society is that it is both freely joined and not freely joined. That is, the choice to join with another person in marriage is a free choice; but one is driven to that choice (and to some extent to join with this particular person) by one of our very strongest drives; and for a person in love, it certainly seems not that the pleasure of being with this person is very desirable, but that *not* to be with her is a disaster worse than death.<sup>70</sup> Hence, it is almost as if one is under a threat if one does not join in sexual union with the other person; and so it is difficult to say that the choice to marry is as free as the choice to buy a car or to go to college.

Further, this drive is toward marriage, not toward just having sex,

<sup>&</sup>lt;sup>70</sup>It is very difficult to figure out which pronoun to use in discussing "the other partner." In one of my textbooks, I used the generic (masculine) pronoun, but that made me appear to be the woman. Here, I have decided that, since I am a man, it is more natural to use "her" in reference to "the partner." Obviously, what I say, unless I specifically refer to the man or the woman, will apply to each partner.

as can be seen from the fact that marriages are still what most people do in our age when, as Alfred Doolittle sings in *My Fair Lady*, "you can 'ave it all and not get 'ooked."

And why is that? Because people, even though they have not thought it through, seem to recognize that consistent sex is impossible without marriage. And so we can make the following definition:

*Marriage* is the society which provides the conditions for being able to use the sexual faculty consistently with itself.

But is this "gut feeling" on the part of people really justified, so that this definition really gives the essence of marriage? Consider the implications in what was said about the sexual faculty in Chapter 4 of Section 2 of the fifth part. It is morally wrong to use contraceptives or to have sex with the intention of never having a child, because this contradicts the fact that the act of sex is, among other things, a reproductive kind of activity. Hence, a person having sex must accept the possibility that a child might result from the act.

But a child needs physical, emotional, intellectual, and financial support for at least 12 to 15 years if he is to have a chance of living a decent human life—and in our culture, the number is probably closer to 20. Hence, having sex involves accepting the possibility of at least a 12-year commitment to take care of the consequences of the act. And what is this but marriage? This is not to say that marriage is just for children, by any means; but it is apt to *involve* children, and children need taking care of.

So let us discuss the child-aspect of marriage first. We can say this:

Conclusion 1: A child has an inalienable right to support by *his biological parents*.

The reason, as I said, is that a child cannot survive without some support, and is dehumanized without the four kinds of support I listed above. But since the child has the right to be supported, and this involves *positive* actions on the part of some people, then it must be specified *against whom* the child has this right. And who would the child have a claim against if not against the people whose choice made him begin to exist?

It may be argued that sometimes people don't choose to have a child; sometimes even people are raped (and therefore are performing the act *against* their will), and become pregnant because of this. Why should such a person be forced to bring up a child she doesn't want and never did want? She didn't choose to have him. Let alone bring him up as the wife of the rapist!

True, it is not always the case that two people who have sex actively choose that there be a child from the act; in many cases, even apart from rape, the passion involved in sex is so strong that the two people couldn't prevent the act in practice, as I said in discussing morality and the choice in Chapter 5 of Section 1 of the fifth part. Hence, they are not *morally* responsible for the child's existence. But, as I said under Conclusion 16 of that same section, they are *physically* responsible for the child's existence, because in fact their act produced the child, and so the child is linked by way of causality to them and no one else. And even though you are not morally responsible for what you are physically responsible for you have a moral obligation to see to it that as little harm as possible comes from acts you have performed. But this means that both of the people physically responsible for there being a child have the moral duty to bring up the child and provide all the four kinds of support the child needs. This physical responsibility, moreover, translates into legal responsibility for the two who caused the children to exist. If for some reason they did not foresee that a child would result, they can

still be held to the consequences of their act, because "the normal person" would have foreseen this, and would accept the consequences or wouldn't have engaged in the act in the first place. That is, the claim, "he was an accident" has no legal standing (or standing in social pressure, for that matter) to absolve the parents from caring for the child just as if he were "intended."

In this connection, I should mention that the phrase, "Every child should be a wanted child" is a serious distortion in the way it is now interpreted. In the first place, it is obvious that it is true when it means that every time two people have sex, they must be *willing* to bring up any child that results. But it *cannot* mean that there is any way out for people who have a child and didn't specifically intend to have him.

At present, what we mean by "Every child should be a wanted child" is that you only decide to have children when you think that you will be "more fulfilled" with them; which makes having a child analogous to going to the store to buy a stereo. The trouble with this attitude is that a child is going to mean a lot of inconvenience, work, trouble, and even anguish for the parents, and is only fulfilling if the parents are *not* interested in being better off for having the child. The parents, as we will see, exist in the family for the child's sake, not the other way round; there is not an economic relation of "We will take care of you if you will compensate us with pleasure and satisfaction."

And, of course, it is by no means surprising to find that those who "wanted" a child in this economic sense tend to want to return the defective merchandise after "working with him" for a while to see if he can be adjusted to their specifications and finding that he can't. But there's nowhere to return him; and so the child winds up a battered child. Thus, the attitude inculcated by "Every child should be a wanted child" could be predicted to *increase*, not decrease, battered children. And is it any accident that since that attitude has

become prevalent, the number of battered children (who were, by and large, originally "wanted") has skyrocketed? If you read what I said about statistics in Chapter 3 of Section 4 of the fourth part, you will find that this statistical correlation is a significant one.

Conclusion 2: It is not that parents should "want" children, but that they must be *willing to accept them and care for them* if they occur from the sex act. Otherwise, it is inconsistent to perform the act.

There is nothing *wrong* with having sex because you want to have a child from it, of course, as long as this involves the willingness I just spoke of, and the realization of a commitment.

In any case, this means the following:

# Conclusion 3: The sex act is *ipso facto* the act of marriage; it contradicts itself if it is done without the willingness to make a long-term commitment to its consequences.

Now of course, using the Double Effect, if the damage to the child can reasonably be expected to be *worse* if the child is brought up by his biological parents, then steps may be taken to see that he is brought up in such a way that the damage is minimized. For instance, it would seem that except in extraordinary cases indeed, it would be worse for the child to be brought up by a woman married to her rapist. The same goes for single-parent families. They are better than *no* parents; but the child in fact needs the emotional and educational support that the different thought-patterns of *both* parents, so that he can realize that there are different and equally valid ways of looking at the world and its challenges and dangers. A

single adult raising a child can only be permitted in order to avoid a worse calamity *for the child*; if the parents find it difficult to stay together and cooperate, this is too bad; they still have to take the consequences for their actions. And in general, society can force them to do this.

And since the child has a right to be supported, then if the natural parents *can't* do it, civil society can take over and demand that others do so by calling on its ability to make others engage in uncompensated service to fulfill the function of civil society (which, as we will see, is to prevent the violation of any citizen's right). But this is only as a practical measure when it is not in practice possible for the child to be supported by *both* of his natural parents.<sup>71</sup>

But what about parents who divorce? This does not change the claim the child has against both of them. But what of a child who is conceived by artificial insemination by a donor? Sorry, donor, but the child has a claim *against you* for his support, since he wouldn't have existed without your act of providing sperm. You are his natural parent, whatever the law says about who the parent is. Surrogate mothers also *are* the mothers of the children, even if they "agreed" to give them up for adoption. They *cannot morally make* such an agreement, because the right to be supported by his mother *belongs to the child*, not the mother. Of course, if a surrogate mother accepts a transplanted embryo and merely acts as an incubator, this does not make her a mother, really; but you can see how this sort of thing makes it a mess to find out who in fact the child has a claim against for support. Is mommy the one whose ovum I developed out of, the one who carried me to birth, or the one who brought me up

<sup>&</sup>lt;sup>71</sup>In other words, Hillary Clinton's book whose title was "It takes a village to raise a child" is off the mark. What the "village" has to do is enable the *parents* to raise the child; and in most cases, this means staying out of the way.

afterward? We are fooling around with *other people's rights*, here, for our own "joy" at having children and our own convenience.

What I am saying is that the current sexual revolution has completely ignored the child and his rights. And this is not surprising, because most of the regulation of sexuality by society has historically been concerned with protecting the rights of children, not (as the feminists claim) men.

In any case, that is one of the reasons why it is inconsistent to have sex outside of marriage. Another is the fact that *sexuality is by its nature "addictive*," in that a person naturally tends to become attached to *this other person* with whom he has sex. Sex (particularly on the part of men, but with women too) also has its promiscuous side, but as Marcel Proust says several times in the course of *The Remembrance of Things Past*, each time one falls in love, the other person is "the only person" to the exclusion of everyone else; and there is also a "foreverness" connected with this attachment. The fact that this tends to fade and can be eclipsed after a while by the same thing's happening with someone else does not negate the fact that the drive has this exclusivity and, as it were, eternity connected with it.

But since this is so, then we can draw the following conclusion:

Conclusion 4: No one who has sex with another person can predict that it will not happen that he or the other will become emotionally dependent on the other because of it—and permanently so.

That is, even if you can have sex the way "social drinkers" drink, and can "handle it" without its becoming anything more than a one-time thing, you still can't predict that the person you have it with isn't going to get "hooked" on you and need you the way an

alcoholic needs to drink.

And the result is that it is dishonest to say, like the song of some years back, "Baby, baby, don't get hooked on me, 'cause I'll just use you and I'll set you free." That's like giving cocaine to someone and saying, "Don't get hooked on this, now." The person who does this sort of thing, which is by its nature calculated to attach the other person to himself permanently *is responsible for the attachment that he has produced in the other person* if it should happen.

As can be seen from the fact that children need years and years of support, this attachment of the couple toward each other is perfectly consistent with the reality of the act as reproductive; and it is not at all surprising to find that it is far stronger in general in women than in men, because women carry the baby and nurse him, and tend to be that much less able to support even themselves while they are doing this; hence their biological stake in a stable marriage is much greater than a man's; and this translates itself into a stronger need for stability in their sexual relations. Cultural conditioning has very little to do with this.

A third reason why the act of sex is the commitment to a stable marriage is that *the sex drive does not disappear after the childbearing years.* People get older, and find that they still need sex, if not as much, sometimes as urgently as they did when they were younger. Unfortunately, as people grow older, they also grow less attractive sexually; and therefore, once they become old and wrinkled, the hope of being able to have sex with the kind of person that attracts them diminishes to being nonexistent.

The only practical way that they can not be sexually deprived as they become old is to be in a stable relationship with a person who loves them for the person that they are, not for the physical attractiveness that they have, and who is not merely willing to have sex with them, but wants to have sex with them because of the love

that exists between them.<sup>72</sup>

Conclusion 5: It is only in the context of marriage that there is reason to expect that the sex drives of older people can be satisfied.

So it is by no means the case that it is solely because of possible children that the act of sex implies the society called marriage. One of the terrible consequences of the current sexual revolution is now beginning to be felt: there are more and more aging women who are lonely and sexually deprived. As Kay Ebeling (a middle-aged woman) says in an article in *Newsweek* the week I wrote this (November 19, 1990), "Feminism freed men, not women. Now men are spared the nuisance of a wife and family to support. After childbirth, if his wife's waist doesn't return to 20 inches, the husband can go out and get a more petite woman. It's far more difficult for the wife, now tied down with a baby, to find a new man."

Instead of increasing the social pressure to force men to take the responsibility for their sexuality that women have forced on them by their biology, women, in their attempt to ape men in sexual irresponsibility, first "removed" the reproductive aspect from sex and then attempted to deny the addictive aspect of it. As Ebeling says, "The main message of feminism was: woman, you don't need a man; remember, those of you around 40, the phrase: 'A woman without a man is like a fish without a bicycle?' That joke circulated through 'consciousness raising' groups across the country in the '70's. It was a philosophy that made divorce and cohabitation casual and routine. Feminism made women disposable. So today a lot of females are

<sup>&</sup>lt;sup>72</sup>Speaking now as an old man, I can say from experience that this (which I wrote when I was younger, and was drawing conclusions from premises) is true.

around 40 and single with a couple of kids to raise on their own."

What Ebeling does not mention is that feminism not only did this to women, but the attempt to be irresponsible sexually meant enormous pressure on women to kill their own children when contraception did not "work." Feminism has gone to enormous lengths to deny the obvious, that the fetus is a human being; and the dissembling and hypocrisy of the position is a cancer that is eating away at all areas of our country, because it inculcates the view that facts can be what you declare them to be, not what they are. This whole book is an attempt at therapy for this disease, as I indicated in the very beginning of the first part.

Conclusion 6: The only way women can be the sexual equals of men is if men are forced by society to take the responsibility for their sexual activity, and sanctions are enforced against sex outside of marriage.

Once marriage goes, then women are bound to be made to behave as if they were inferior to men, not only sexually but socially. For all these reasons, it can be said that the sexual faculties cannot be exercised consistently with all aspects of their reality and the

be exercised consistently with all aspects of their reality and the reality of the persons involved outside the context of marriage; and therefore the definition of marriage given above was the correct one.

But if this is what marriage really is, then it follows that

#### Conclusion 7: homosexuals cannot marry.

The current furor (I am writing now in 2004) over "gay marriage" completely misses the point of marriage. I am not saying that homosexuals are necessarily incapable emotionally of sustaining a stable single-sexual-partner relationship (though as far as

homosexual men are concerned, "stability" seems to consist in the fact that the other man is the main but not the exclusive sexual partner). But the relationship is not a marriage, precisely because, as we saw in Chapter 4 of Section 2 of the fifth part, homosexual sex is not consistent with at least one of the aspects of sexuality: the reproductive aspect.

So the conclusion above does not mean that homosexuals are morally forbidden to marry; it means that it is in fact impossible for any relationship they have to be a marriage. I might point out that two homosexuals who love each other may morally live together with affection but without sex, and have that kind of a stable relationship, just as two heterosexuals can, as they say, "live together as brother and sister"; but this relation, while it may have many positive things about it, is still not a marriage.

I think I should add that giving "the rights of marriage" to sexual commitments between homosexuals is wrong on several counts. First of all, it implies the false "recognition" that the two relationships are equally valid and to be commended by society. But secondly, society does not "confer rights" upon marriage when it confers certain benefits, such as tax breaks, spousal privileges, and so on. What these are are *privileges*, not rights: they are benefits that produce an incentive for people to marry rather than simply "shack up" and by doing so put any children that might result in danger of harm. Hence, if heterosexuals are granted these privileges, homosexuals are not performing the service to society of maintaining the population in such a way that the next generation will be good citizens, and so they do not have any "right" to the rewards society chooses to give for such a service.

And, of course, the notion that homosexuals can adopt children (or that lesbians can have children by artificial insemination) is

#### Part Six: Modes of Interaction

damaging to the children. It is simply not true that if Heather has two mommies and no daddy, she is not severely handicapped, even if many Heathers overcome the handicap and lead more or less normal lives in spite of it. The point is that the fact that some children are not harmed by what is calculated to do them damage should not be grounds for putting any child in harm's way.

The following is also true:

# Conclusion 8: People who, because of injury or some other reason, cannot perform the sex act, cannot marry.

Again, this is not to say that a man and a woman who love each other deeply but who can't have sex (i.e. one or the other is physically incapable of it) can't live together just like a married couple except for sex; but this is not in fact a marriage. It may even be recognized legally as a marriage (for purposes of taxation and social benefits), because civil society has no business knowing whether a couple ever has sex or not; but this still doesn't make it a marriage, however "married" the couple may feel.<sup>73</sup>

#### Conclusion 9: People who are capable of performing the

<sup>&</sup>lt;sup>73</sup>Recently there was a case in the United States of an injured man and a woman who were shocked because their Catholic pastor refused to marry them, on the grounds that what they would have was not a marriage. The newspapers took up their cause and castigated the "insensitivity" of the priest, who, like a good Catholic, was only recognizing the facts for what they were. As I remember the two were finally permitted to go through a religious ceremony they could call a "marriage" and which was the all-but-marital commitment I spoke of above; but in fact they weren't married, and the woman had to give up one of her major rights as a wife in order to enter the relationship—which she was quite willing to do, and which was very noble of her.

# sexual act may marry without ever having sex, if the Double Effect warrants this.

It may be, for instance, that a man with AIDS wishes to marry a woman he is deeply in love with. He is *capable* of having sex with her, but having sex with her might very well give her the disease, killing her. Can they marry, intending never to have sex? Yes, it would seem, just as a couple who have had sex may have to choose to refrain for the rest of their lives if one contracts AIDS (by a blood transfusion, for instance).

In these cases the marriage is a marriage, because it is capable in itself of being itself; but since their sexual activity has disastrous effects, then by the Double Effect they can keep the lack of this aspect of their marriage *out* of their choice when they choose to marry and subsequently. If the disease is cured, for instance, they can engage in sex; and so they have not denied that marriage involves sex, but simply permitted its lack because not to do so would be worse. What I said in Conclusion 7g2 of Section 2 of the fifth part still stands: you can't choose to have sex with a partner with the intention that no child ever result from the whole series of acts; but this does not mean that you can't ever *marry* without having the intention of having sex at some time, even though marriage is the society whose common goal is consistent sexual activity.<sup>74</sup>

<sup>&</sup>lt;sup>74</sup>I might point out that those who disagree with this point, if they are Catholics, at least, would have to say that Mary and Joseph were not married; because Catholic tradition says that Mary was a virgin her whole life long. Obviously, Joseph respected the fact that she was really the wife of the Holy Spirit and never violated that relationship, while at the same time he married her because it would be horrible for the Son of God to be, to all appearances, a bastard.

In fact, if you read Luke carefully, Joseph and Mary had evidently already reached a decision to marry without any children before Gabriel made his announcement to

If, then, this is what marriage is, then we can say the following:

# Conclusion 10: Marriage is only dissolved by the death of one of the members of the society. The couple cannot in fact divorce.

That is, the relationship they enter when they enter this society is such that it must be stable not only while the children are growing up and need both parents, but through the old age of the couple, or it leaves them with no practical way to fulfill their sexual needs in old age.<sup>75</sup>

Mary; because when he did, she said, "How will this be, since I am not to have relations with a husband?" I translated this sentence this way, even though the Greek verb is a present tense, since the verb can bear this significance, and in the context it makes no sense for Mary to be puzzled, since she was about to marry Joseph. A woman about to marry who is told that she is going to have a child would naturally think that she would conceive the child by her husband as soon as they married. Hence, Mary's puzzlement and statement means "I don't have sex" in an absolute sense, not "I haven't had sex yet"; and seems to indicate that under some divine inspiration, she had made a vow to remain a virgin, and Joseph had evidently chosen to be her husband in the sense above in order to protect her from people who would force her to marry and then force sex upon her. That interpretation (which to me is the only one that makes sense out of the text, especially given the parallel doubt of Zechariah which preceded this episode) is the Scriptural basis for saying that the *adelphoi* of Jesus were cousins, not brothers, and that Mary remained a virgin her whole life long.

<sup>&</sup>lt;sup>75</sup>Note that "sexual *needs*" here is a bit of a misnomer. A "need" (necessity) is, as we saw in Chapter 3 of Section 7 of the fourth part, something without which a person is damaged or dehumanized. But there is no *physical* harm to a person if he cannot engage in sex, and the lack of being able to do so, therefore, deals with his not being *better off* (in, for example, physical and emotional satisfaction) than he is now. Hence, while it would be dehumanizing to force a person *never* to engage in sex (and consequently this can be done only if, by the Double Effect, one is preventing greater harm), there is nothing inherently evil in a person's *no longer* being able to engage in

This does not mean that the couple cannot, using the Double Effect, *separate* from each other. If a woman is being beaten by a man (or a man being beaten by a woman; it happens more often than one would think), then it is obviously worse that she be forced to live with him (worse for the children too, who have to witness such things) than for the two to live apart from each other. But they are still married. Neither can "marry" someone else.

If this were not the case, then the fact that remarriage with someone else was possible "if things got bad enough" would be a strong incentive for things to get bad enough if one of the partners happened to fall in love with someone else. And the very love of the other partner for the one who now yearned after another would tend to make him not try to "stand in the way of her happiness" and agree to the divorce, however devastating it might be to him.

Further, if divorce were allowed in extreme cases, the cases defined as "extreme" would in rather short order become such that there was nothing objectively extreme about them. The reason is that, no matter where you draw the line, there will be people just on the other side of the line, who see no practical difference between their situation and that of those who can get divorced—because there would *be* no practical difference. So to take care of them, the line would have to be drawn closer to normalcy. For instance, if divorce is permitted for wife-beating, a given wife could easily argue that locking her up at home with no money or telephone was if

sex. Still, there is the urge, which is from nature, and it is still, as I said, sometimes strong in old age; and so there is in some sense a deprivation if one cannot fulfill it (at least an emotional one). So the argument, while not strictly logical, does have force. That is, it seems reasonable to say that there must be a way in which it is by and large *possible* to be able to fulfill one's sexual desires even into old age; otherwise, why does nature not shut off the desire after a certain age is reached, as it shuts off the possibility of having children at menopause?

anything worse; or verbal abuse can be as bad as physical beating. "Bad," as I have said so often, is subjective.

And this is another one of those predictions from the nature of things that turns out to be amply verified in practice. From the horror at divorce when I was a child and a young adult, we have passed to the stage where half of the marriages end in divorce, and "no fault" divorce is the norm.

And this is just a calamity of epic proportions for the poor children, who grow up with two or three daddies, or even revolving-door daddies and mommies both. Again, we are closing our eyes to the facts and pretending that "kids can do all right if their parents are divorced, and better than if two people who hated each other stayed married"; and people argue passionately against those who say divorce is never permitted as if they meant that separation was never permitted. What is not permitted by divorce is *remarringe*, and the arguments in favor of divorce do not give any real reason why not permitting another marriage hurts the children so terribly.<sup>76</sup> The fact

<sup>&</sup>lt;sup>76</sup>Those who are concerned about Scripture's permitting divorce between the times of Moses and Jesus should listen to what Jesus says about it that it was permitted (as Matthew reports) "because of your insensitive obstinacy." That is, presumably during that time, YHWH himself was taking on the task of seeing to it that the harmful effects would be circumvented.

Incidentally, the "except for promiscuity" phrase that Matthew puts in to Luke's earlier, doubtless more literally correct, version of what Jesus said, could have been intended to *close* a loophole rather than open one. What Jesus said is that any man who divorces a woman makes an adulteress of her. The casuistical mind of the Hebrews at that time would naturally ask, "But suppose she's already an adulteress. Does that mean you can divorce her?" So the sense of Matthew's interpolated phrase (since his *Report* was, among other things, to get across the *meaning* of what Jesus was saying) was, "If a man divorces a woman who is not already an adulteress, he makes an adulteress of her." And this is clarified by the subsequent phrase, "And any man who marries a divorced woman commits adultery." That is, a divorced woman having sex is committing adultery. Certainly Luke and Mark don't give the impression that Jesus

that availability of divorce frees men, not women, is just another argument against it. When divorce is permitted, women are demeaned.

Further, there is the fact that if divorce is permitted, what is to happen to each partner in old age will tend to be lost sight of, with the result that people who find living together intolerable will divorce with little thought to what is going to happen to each of them twenty or thirty years from now. And since middle-aged men are still attractive to young women (but middle-aged women are not attractive to young men), it is extremely easy for men to think of their wives as insufferable harridans when the secretary is so kind and nice. And if the women find themselves bereft at age 40, as I quoted above, what will it be at age 60 and 70, knowing that they have been just tossed aside after they have grown stale? Women and the elderly are as harmed by divorce as the children are.

A further thing that is not noticed is that it is putting a great strain on the virtue of men (whose sex drive tends to be more promiscuous than that of women) not to have any social help to tide them over the difficult times when they start to fall in love with a younger woman who is attracted to them, which makes them look at their middle-aged wives with new eyes. If divorce is available to them, why should they stay with this shrew who even becomes worse knowing that their affection is beginning to wander? Everyone else does it. Many is the man who deeply loves his wife and is sincerely trying to "make things work," but becomes involved with the other woman partly because the society is almost pushing him to do so with its emphasis on irresponsible sex—and finds that the *only* thing he has to rely on to stay faithful is the promise he once made and the more or less abstract fact that it is morally wrong to abandon his

taught that divorce was ever permitted.

wife.

So we can take it that the old traditional view (still given lip service in the marriage vows) that the only thing that dissolves marriage is death is the correct view.<sup>77</sup>

But if this is true, then marriage, being a commitment for life under all circumstances, cannot be entered into lightly. One may *hope for* fulfillment from it; but since one is married even when it is anything but fulfilling, one cannot marry *for the sake of fulfillment*. This is important enough to put into a conclusion:

## Conclusion 11: It is immoral to marry for the sake of one's own fulfillment.

<sup>&</sup>lt;sup>77</sup>Note that those who *take* the traditional marriage vows are making a really strong promise: "For better or worse, for richer or poorer, in sickness and in health, till death do us part." In other words, they have foreseen the conditions that would tend to make them separate (such as alcoholism) and have explicitly rejected them as grounds for doing so. And since it is immoral to break promises once made, unless there is at least the tacit understanding that the conditions are such that it is now damaging to keep the promise, then the promise must be kept. The point of *this* promise is that it explicitly excludes "conditions such that it is now damaging to keep the promise, greatly because things change after marriage, that's too bad; morally speaking, just because of the promise, one is still married.

And, of course, if one marries "understanding" the promise as meaning less than this, one engages in a fraudulent marriage, because the other partner may very well understand it literally, and so should the witness, the clergyman who performs the ceremony, if he knows what he is doing. And a fraudulent marriage is not a marriage in the first place.

This fact that "marriages" may be entered into fraudulently is the grounds for the Catholic Church's annulment procedure. The Church does not actually annul the marriage, but simply declares that what was thought to be a marriage was not in fact actually a marriage. There is a great deal of abuse in annulments as I write this, making them, for practical purposes "Catholic divorces"; but as the saying is, "abuses must not destroy the use." Annulments must still be available.

That is, there is the other person and the possible children who must be taken into account; and the marriage cannot be dissolved (because of the children and the old-age problem) even if both parties think that they would be better off unmarried. Hence, each person who enters a marriage must be aware that the other person might get much more out of it than he will, and also that he might wind up being even considerably worse off than he is now, single. It is no fun being married to an alcoholic, for instance; but many people don't become alcoholics until after they are married. But, as I could see with my father and my mother, what was my father to do? Turn my mother out and let her "fend for herself" while he lived a more or less normal life? How could she fend for herself? She couldn't even get dressed many days. One of the reasons we have so many homeless "street people" is that they have husbands or wives or families, but these people "can't deal with them" and kick them out so that they themselves can have a chance to live. One can sympathize with both sides on this; but the point I am making is that it can be very, very difficult to live with the person you now idealize so much; and if you can't divorce yourself from her, then you have to accept that you are willing to stay married to her even at the expense of your own fulfillment.

Therefore,

### Conclusion 12: Marriage as a society presupposes actual love of the partners for each other as a condition for entering it.

"Love" here is not to be taken as "infatuation" or even, necessarily, "sexual attraction." Love means willingness to (a) accept the other for what she really is, and help her attain her own goals, and (b) willingness to subordinate one's own goal-seeking to the goal-seeking of the other and to the children's development, if any.

Thus, things like arranged marriages do not necessarily violate this presupposition of marriage. As I heard an Indian girl say one time when an interviewer was asking her how she felt about the fact that her father was choosing her husband rather than letting her follow her own heart, "I have no problem with this. My father loves me, and he is not going to choose for me someone who will not make me happy. Just as my father loves my mother, who was chosen for him, I will love my husband."

In fact, our American idea of romantic marriages if anything tends *against* the love that is required in marriage, because it tends to be mindless and purely emotional. Instead of putting ourselves in the way of falling in love with the kind of person who we could predict *a priori* would be a friend for life, we tend to associate haphazardly with the opposite sex, and wait until the bomb explodes; and then we throw reason to the winds and rush in to a permanent commitment at the very time when our emotions do not let us see who this person really is and whether it makes any sense for the two of us to be tied together until death. This is made all the easier, of course, by the thought that "if it doesn't work out, we can always try again."

So the attitude of people toward sex nowadays is exactly the opposite of the attitude necessary for it to be what it is. "Responsible sex" now has nothing to do with the reality of sexuality, but of avoiding the consequences of the act without avoiding the act. It means, "use a condom," not "don't have sex outside of marriage."

Small wonder that this irresponsible "responsible" sex should backfire, and that teen agers should be getting pregnant in petrifying numbers, and that AIDS should be spreading as an epidemic. If people are asked to close their eyes to certain inconvenient aspects of the reality of sex, why would anyone expect them to keep their eyes open to other inconvenient aspects? So all the attempts at "sex education" which are different from what you find in this book *can* 

*be predicted* to cause *increases* in sexually transmitted disease and pregnancy out of wedlock; and everything done to curb these bad effects will only exacerbate them until we have brought such a disaster on ourselves that we recognize once again what was obvious all along: that sex belongs only in marriage, that marriage is indissoluble, and that marriage presupposes love and the willingness to sacrifice oneself for the other and for the children. We will come once again to this conclusion, just as all the sexually promiscuous ages have; God grant that it will be soon, so that we can minimize the damage that is already far greater than we realize.

Having said that marriage presupposes love, I do not want to leave the impression that we should go to the other sentimental extreme and say that marriage is a "total giving" of oneself to the other partner. To give oneself *totally* to the other partner, or to subordinate oneself completely to the other's interests or fulfillment, would mean willingness to do *damage* to oneself for the sake of the fulfillment of the other; and this is immoral. A person's reality as a person *does not disappear* in the spouse; and no one must ever be willing to do what is morally wrong or to harm himself for anyone, spouse included.

Conclusion 13: The love that is presupposed in marriage includes respect for one's own reality, so that one will not be willing to do himself any damage for the sake of the beloved.

Sometimes it can be that to avert worse damage to the beloved, one may (or must, even), using the Double Effect, do what will as a side-effect bring damage upon oneself. But this is permitted in any human relationship, not just in marriage. I would think that in Double Effect situations, however, the love in the marriage would tend to make one choose the avoidance of the harm of the *beloved* in

preference to avoidance of one's own harm when the two harms are about equal; but in cases where one's own harm is significantly greater than the harm of the beloved, then one would be morally obliged to choose the avoidance of one's own harm, keeping the damage to the beloved out of the choice. For instance, if there was only enough money for one operation, and one partner needed removal of tonsils to keep from getting tonsillitis year after year (which could be cured every time with antibiotics), and the other needed a cataract operation in order to be able to see, the spouse with the cataracts would be obliged to choose his own operation, even though his wife remained chronically ill.

Marital love, then, is not to be that romantic "love" that is irrational. Nor is marital love something that produces a "union" of the two as if some third thing like a body emerged out of these two cells, to which they became subordinate. Spouses sometimes talk as if "the marriage" were something that was to be preserved and fostered even at the expense of both parties to it.

No, the marriage is a *relationship*, not an object in itself; its reality consists in what each member *does for the other member*, not what each member does for the "relationship."

The "union" in marriage consists in this: When I make my goal the fulfillment of my wife's self-chosen goals, then her goals *as chosen by her* become one of *my* goals in life. Hence, her reality as *distinct* from mine is now *within* my chosen reality, because I cannot now attain my happiness unless she is the kind of being she wants to be. She is always a distinct, different, "separate" being from me; but her reality is within my concept of my "true reality," because I choose to make as my goal her fulfillment. In that sense, she is within my life and the two lives we live are entwined into one life.

I think this last paragraph bears rereading; it contains something extremely profound. The "otherness" of the other person is what is

willed by oneself, and in this vary act, the other *as* other is contained within the self. But the other does not "get absorbed" into oneself (as if she were subordinate to one's own development), but remains other and "outside" the self, even while being one goal of the self's own development: I cannot be myself unless she is the self she wants to be. The satisfaction of seeing her fulfilled on her own terms is my own fulfillment. This is the mystery of love.

I stress again that this "absorption" of her into my set of goals for myself *leaves her utterly free and independent of me*. It isn't she who depends on me, but I who depend on her, because I must discover from her what her goals are for herself before I can will them as my goals for her also. If I try to make her conform to my notion of what her goals for herself "ought" to be, then I don't love her, but want to subordinate her personhood to myself. This is the very opposite of love. Hence, the "union" of the two in love consists precisely in *each letting the other one be his independent self*, and each adapting his own reality to the *reality* (including the self-determined goals) of the beloved. Loving is not tying in; loving is letting go.

Of course, this "letting go" cannot be absolute, any more than the "giving" to the other can be absolute. A spouse cannot *abet* his spouse when she wants to do something *damaging* to herself; it is not love to help another person harm herself, even if she wants to do so. Of course, love is not necessarily going to *force* a person not to do harm to herself if she knows what she is doing and chooses to do it anyway. As I mentioned in discussing the alcoholic in Chapter 5 of Section 1 of the fifth part, "tough love" which forces things on a person against her will is permitted only to remove the emotions' *blinding to facts*, so that the person can see information unavailable because of emotions. But if the beloved knows the facts and is freely choosing to ignore them, then (absent damage to some third party), love will not thwart what she is doing to herself. Not even God's

perfect love does this; and human love is not to attempt to be greater than God's.

Hence, it is never love if it involves choosing damage either to oneself for the sake of the beloved, or damage to the beloved because she wants it.

Nor is marriage, because it presupposes love, "total openness to the other" in the sense that absolutely everything that one does and is is completely revealed to the other person. As I said when discussing the right to privacy in the preceding section, this total disclosure is not humanly possible; there are bound to be facts about one's life that one has forgotten, or even which, if revealed, will give a completely false impression about oneself. Thomas Hardy, in *Tess* of the d'Urbervilles shows what a disaster revealing too much about oneself can be, given the personality of the other person. Angel revealed to Tess that he had once had sex with another woman, whereupon Tess, with great relief, unburdened herself of the fact that she had once been raped. Angel then became embittered against her, and could not bring himself to act lovingly toward her again. This sort of thing happens.

Hence, it can be that "total openness" works directly *against* the possibility of the two partners being able to live together in intimacy and work for each other's happiness. If one spouse wants to "know everything" about the other in the sense that he will try to pry into the other's life, then this very desire, insofar as it makes the other person uncomfortable, is an indication that the inquisitive spouse is not concerned with the other's *reality*, but with his own knowledge of the merchandise he has acquired.

Conclusion 14: The "open communication" in a marriage must mean that nothing the other reveals will make a negative difference to him, so that the other partner *can* reveal anything

# she wants about herself to him and still be loved and accepted. But any attempt to demand or expect revelation works against openness of communication.

That is, "openness of communication" is to be *receptiveness only*. As soon as one spouse gives the impression that the other is not "communicating enough," then he is saying, "If you really loved and trusted me, you wouldn't keep secrets from me," instead of saying, "Since *I* love *you*, it doesn't bother me in the least if you have your secrets." Even if the secret is just something embarrassing, that the spouse isn't really trying to "hide," but just finds difficult to say (and many men are tongue-tied when it comes to their own emotional lives), then the least pressure to reveal it automatically is going to make the spouse wonder why his beloved wants to know; and protestations of, "I just want to know all about you" are going to be interpreted as "I want to have all the facts so that I can make a proper *evaluation* of you."

Every person, particularly one who loves another, is painfully aware that he is imperfect—and in fact, is unworthy of the one he loves. He *hopes* that the other person loves him and accepts him, but he is *afraid* that if she ever found out what he is really like, she would reject him. It takes years to overcome this fear; and the least little thing will reinforce it, not diminish it. When, therefore, the beloved gives the impression that she actively wants to know these facts that the lover fears might make her love him less, *he is all the more reluctant to reveal them*, because he is afraid that his acceptance by her is contingent upon his measuring up to her standards, which he fears he cannot do.

However, insofar as the other person accepts the tentative approaches toward revelation of what is not perfect about himself—without giving the impression "Is that the worst, or is there

more?"—then he is emboldened to say more; and if that is accepted, then after a time he knows he can unburden himself to her completely without its making any difference in her attitude toward him. And at that time, the revelation may or may not be complete (because he might not have a need to tell her some particular thing about himself), but it becomes free and joyous, and communication in the true sense between the spouses is established. Neither needs to hold back anything or to have the other not hold back anything; so that anything that needs to be said can be said. But when "openness" is supposed to be "total," then first of all, communication shuts down, and secondly, each party feels guilty and/or resentful toward the other.

To correct another misconception about the love in marriage, we can say that *it does not involve helping the other be a better person*. This is a fallacy that religious people are apt to fall into, thinking that they are supposed to get married to "help the other person get into a high place in heaven." They often do this, because it takes a saint to hold onto his sanity in the face of someone's constantly pushing him toward greater and greater "perfection," clearly demonstrating that no matter what he does, he's never good enough to suit her.

The reason this is a fallacy is that it is assumed that "perfection" is something objectively knowable, toward which another person can be pushed by a loving helpmate "who knows him better than he knows himself." First of all, this "knowledge" of the beloved is a natural delusion that comes because of the sex drive. That drive, in order to attach us to one individual, blocks out of our consciousness the things that we would find undesirable, and enhances those that we find admirable; and so the beloved appears as a paragon of virtue and humanity. But then after marriage, when the drive is satisfied, the scales fall from our eyes, and we find that the person we married isn't what we thought she was. But the image we originally formed

of our partner is still there, and so we think we know what she is "really like, if only she'd work at it a bit." And so to "help" her, we try to point out these little rough edges that she could smooth out, and show her the way toward that marvelous person now hidden inside. (The reason I've been mixing up the pronouns in these two paragraphs is that this happens on both sides.)

But of course, this image is, as I said, a delusion, and has nothing to do with what the person really is—because what a person *really* is is what her *goals* are, as I said in Chapter 4 of Section 4 of the third part; and these goals are *self*-set and are not something objective. When you try to push someone toward a "perfection" you want her to achieve, what you are doing is trying to force her to adopt *your* goals for her life, or to make her over into *your* idea of what she "ought" to be. But this makes her a slave, *and is a direct contradiction of her selfhood*.

Therefore, we can say this:

# Conclusion 15: Love in marriage involves *absolute acceptance* of the other person for what she really is, not in an attempt to "improve" her.

Another way of saying this is that *love does not involve evaluation*, because evaluation always measures something against a (personally set) standard, and thus one would be expecting the other to live up to one's own idea of what she "ought" to be, and not accepting her as she is.

This attempt to "improve" the other is insidious precisely *because* the beloved loves you; if she loves truly, she will accept your attempt to improve her and try to conform to it, giving up her selfhood to your selfish demands upon her. As I said, trying to make another person into a saint often works if the other person loves you; but to

make the attempt is perhaps the greatest marital sin there is, because in the name of love it works directly against the love which is the presupposition of marriage. It is spiritual rape.

Here is what love in marriage essentially is; and it is important enough to put into a conclusion, not a definition:

# Conclusion 16: Love in marriage is *willingness to be used* by the other person.

The feminists thought they found out something that hundreds of generations of women had been brainwashed into overlooking: that in marriage, the women were exploited by their husbands. That is perfectly true. What the feminists did not notice was that for hundreds of generations, men have been exploited by their wives.

What? Why the men were free to go out to work, the women had to give a dowry to buy a husband, the men owned the whole income of the family! That's true, and from a "raised consciousness" point of view, it is exploitation and the men have always had it made. But if you look at it from the man's point of view, you find (a) that the men had to go out and work at the job that paid best, because they had to support the family in the style the women dictated-because the women *spent* the money the men made. As late as my teen years, getting a job was not looked on as finding "fulfilling work," but as something you had to do to support a family. Women are now finding that working under someone else is far from "fulfilling"; and men have always noticed that managing a household means that you're your own boss, and your time can be allocated the way you want it to be. But this is not just recent; it's always been this way. Even Plato talks in *Republic* about the men's "problems and worries in bring up their children and finding enough money to keep the family going, going into debt and bankruptcy, and all the little tricks

they have to resort to to scrape together what they just hand over to their wives and servants to spend." Who has the power, the one who earns the money or the one who spends it?

(b) The dowry was connected with this; since *all* of the man's income was the family's income, not his own (and since at the beginning he didn't have much), the dowry was considered to be the woman's sole financial contribution to the marriage.

(c) Legally, the man was the administrator of the *family* money; but he was accountable for the way he spent it, and could be brought to trial for non-support if he spent the money he earned on himself and not the family.

Furthermore, men have always talked among themselves as if being married was being "tied down," and "trapped," not as if having a wife was having an unpaid drudge and prostitute. Men have always recognized that it was cheaper in the long run to hire a cook and a housekeeper and to visit the brothel down the street; getting married and having a demanding woman take over these services was not regarded as a step up, but a step down, if for no other reason than that children came from the latter arrangement, and children are even more expensive, if possible, than wives.

Now all of this is not to say that women are the ones that have been "oppressing" men for millennia; only that if you "raise your consciousness," men can make out quite as good a case of being oppressed by their wives as women can that they are oppressed by their husbands. And the reason is precisely that in marriage there is "being used by the other" on both sides. If you are interested in your own freedom and your own personal fulfillment, then marriage is *bound* to be oppressive. The main thing you give up in marriage is precisely freedom; you must leave the other person free, and adapt yourself to her reality, tying yourself down to her, and gladly being used by her.

Of course, if the other person knows what marriage is about, then she is also gladly adapting herself to your reality and tying herself down to you; and so in the best of marriages, each person does fulfill himself, because he knows that this is what gives the greatest happiness to the other person; so in a perfect marriage, both are free, unhindered in personal development by the other, and helping the other not be "better" but to develop as she wants to develop. But few marriages work out this way; one person is almost bound to be a taker rather than a giver; and so it works out usually that one of the pair does by far most of the giving and the other most of the taking. So in some marriages, the wife is exploiting the husband, and in some, the husband is exploiting the wife. But with marital love, this doesn't matter. That's the whole point of marital love.

If this is true, it isn't surprising that the destruction of the family has coincided with the feminist movement. Women, in trying to get free of "oppression," have destroyed the foundation upon which marriage is built; and if the foundation goes, the superstructure cannot be far behind. But women are beginning to wake up to the fact that they need marriage much more than men do, once men can have sex without it.

Marriage, then, like sex, has any number of fallacious ways of thinking about it. One recent one (partly brought on by feminism) is the notion that, since marriage is a contract, you had better spell out the terms clearly before you enter it; and so we now have "nuptial agreements" where each party pledges to do this or that in return for compliance with the terms by the other party.

This puts the marital relationship squarely in the realm of economics, when the relationship is not even one of cooperation, but even beyond that of mutual love. When people cooperate, they have a common goal which is to the advantage of each; when a person enters a marriage, he must be willing, as I said, to sacrifice his own

advantage to the reality of his beloved and their children. That is, on entering marriage, each person has to realize that in fact he may wind up *less* well off than he is now, and will be unable to get out of the marriage even if this is the case.

# Conclusion 17: Marriage is a *covenant*, not a contract; it is a pledge by each person of a permanent commitment to the other person come what may until death.

Precisely because it is such a terrifying commitment, it is usually, and rightly, made with great solemnity before witnesses, who can guarantee that it was in fact made. The wedding ceremony is far more than just something festive; it is society's way of saying, "You cannot get out of this and say you never made the pledge; hundreds of people heard you do it."<sup>78</sup>

For those who say, "We don't need a piece of paper to prove that we are married," my answer is that they are fools who don't realize what they are getting into. Any married couple (which means any people who have sex together) need all the help they can get to stay together when the inevitable time comes when they "realize that they are just incompatible, and that it won't work." No two people are *ever* "compatible" for years and years and years and years. Furthermore, the people around them have a right to know whether they are married or not; because if they are, then society has

<sup>&</sup>lt;sup>78</sup>It is not surprising, given the contingencies that can make the marriage all but impossible to maintain that religion should always have been involved with this, and that the pledge be a solemn vow before God as well as before all the other witnesses, together with a ritual of prayers for God to give his help to each of the couple, who need more than human assistance to keep to the pledge. In this connection, I suppose that it was no accident (though Jesus made it seem so) that Jesus' first miracle was performed at a wedding celebration.

an obligation not to throw roadblocks in their way; and if they aren't then the people who deal with them have a different relation toward each (you don't ask someone's wife out for a date, for instance). What I usually reply to people who "don't need a piece of paper" is "Then why are you afraid to get one?".

Now then, within a marriage there isn't a dividing up of duties, rights, and responsibilities, precisely because the relationship is one of love, not of economics or even cooperation for a common goal.

The first conclusion to be drawn in this regard is this:

# Conclusion 18: There is no authority in marriage; neither person has the right to give orders and threaten the other with punishment.

In traditional Scholastic ethics, it is said that the man by nature has the authority in "conjugal society," because he is stronger than the woman and also more aggressive. But this is nonsense. Authority is the right to issue commands, and one is not "more fitted by nature" to issue commands because he is more of a bully. If someone were more suited to issue commands it would be because he was *wiser*. Once that is said, it is obvious.

And I simply deny that men are by nature wiser than women. The human spirit is in itself the same in every human being; it differs by the degree of the individual human unifying energy, which, as far as wisdom and intelligence is concerned, involves the capacity of the brain to hold more or less information above the threshold of perception, as I said in Chapter 3 of Section 3 of the third part. Once the information is conscious, the spirit can see the relationships. But there is no evidence for inferior brain-capacity in women; there are brilliant and stupid women just as there are brilliant and stupid men.

Hence, there is no difference between men and women in the

respect that would be relevant to establishing that one should be giving the orders and the other taking them; so there is no basis for a "natural authority."

Furthermore, since the two partners love each other, which means that they are willing to defer to each other, there is no need for authority. There are only two of them, and they can reach a consensus. The Scholastics object, "But what about situations in which the two disagree and each thinks his reasons are best? Someone has to break the stalemate." True, but this by no means implies that the man is the one to do it. When a couple are at an impasse like this, *they must seek outside advice and follow it;* it isn't that the wife must give in to the husband. Further, it is clearly invidious to take a situation like this and infer from it that the husband has the right to impose sanctions on his wife.<sup>79</sup>

In any case, the idea is that the wife is to defer to her husband the way the community defers to Jesus. But the "orders" of Jesus precisely leave the community free to do whatever they want, except for what is self-contradictory. And husbands are

<sup>&</sup>lt;sup>79</sup>As to what Paul says in *Colossians* and "Ephesians" about the relation of husbands and wives, it is not generally read very carefully, because "of course" Paul was a male chauvinist. Colossians is simplest: "Women are to listen to their husbands; this is what is proper in the Master. Men are to love their wives and not be harsh with them." If we take "love" in the sense defined above (which is, after all, the love that Jesus in "emptying himself" for us exhibited), then it means that each is to yield to the other. "Ephesians" (which was probably a letter to Laodicea, not Ephesus) spells it out a little more: "Give way to each other out of respect for the Prince's authority. Wives are to submit to their own husbands as if they were the Master; because the husband is the head of his wife more or less in the sense in which the Prince is the head of the community; he is the one who keeps the body safe. But in the sense in which the community listens to the Master, wives are to listen to their husbands in everything. Husbands, you are to love your wives in the same way as the Prince loved the community and surrendered himself for it, to make it holy by washing it with the bath of the water that has the sacred words said over it...This is the way husbands ought to love their wives-as if they were their own bodies. When a man loves his wife, he is loving himself."

As to roles in the marriage, it is better to talk about the necessities involved in a marriage: there have to be (a) resources sufficient to support the couple, and (b) a style of living of the couple. Traditionally, the man has been held responsible by society for supplying sufficient resources to support the family, and the woman responsible for defining the family's life style (since marriage naturally develops into the family).

There is no special reason why the responsibility should be divided in this way; but it *is* true that society has a right to know who is to be held accountable for failings in these two areas; because if the family doesn't have sufficient income, the children can suffer, and if they have sufficient income but are neglected, then they are being harmed by their parents. In either case, society's concern to see to it that no one is deprived of his human rights means that it must force the married couple to do what is necessary for each other and the children.

Hence, it doesn't seem to me that a loose arrangement whereby who is accountable for what is not defined is workable as a general rule over a long time. And, in fact, in our attempt to establish such looseness, there has been a tremendous increase in neglected children. As I said earlier, the ones to suffer from the current sexual

to love their wives as Jesus loved the community; and Jesus followed the commands of those in authority in his community, and gave himself up to death for his community; and became our servant and our friend, though he was our master. So Paul is not, in the final analysis, saying anything different from what I have said above.

And, as a final note, when Peter speaks of the woman as the "weaker vessel," this is what he actually says: "And husbands in this spirit [that of the submissiveness of women to their men] are to live in partnership with your wives, realistically, treating them carefully like delicate china, and like co-heirs of the gift of life."

That is, the Greek of the "weaker vessel" doesn't mean a "defective pot" but refers to pottery that is easily broken, or delicate. It is not a pejorative image at all; and the context clearly indicates equality between the two.

revolution are children and the elderly; and there is no realistic prospect of anything except a worsening of what is going on at present.

Hence, though the woman doesn't have to do the dishes and cook the meals, she is *responsible* for how the family eats and is clothed and so on; and while the man doesn't have to go out and earn the money, he is *responsible* for the income of the family, so that he is the one who is answerable if there are too few resources to live on, and can be forced to work if he just wants to sit in front of the TV and drink beer.

There is nothing wrong with the man's being a househusband and taking over the task of the life style of the family, while the woman goes out and becomes its breadwinner; but, given that society has a stake in what happens within the family, if this arrangement results in neglect or poverty, then the househusband is to blame for the poverty, and the wife for the lice-ridden kids.

That is, society is perfectly within its rights in regarding the husband's income as the family income and the wife's income as hers to be contributed to the family if she wants to; and the society is also within its rights to blame the woman if the style of living of the family is sloppy and squalid. This will sometimes be unjust; but it would be far more unjust if no one were able to be held accountable. So rather than woman's place being in the home, it is that woman's responsibility is for the manner of living of the home, while man's responsibility is for the level of living of the home.

## Chapter 3

## The family

The responsibilities of each of the couple show that marriage naturally goes beyond itself to the family. Not every marriage results in children, of course, and there is nothing wrong with entering a marriage where you happen to know that there can't be children—for instance, marriages between older people are perfectly legitimate morally. Sexual activity is still moral and consistent between them even if no children result, as we saw in Chapter 4 of Section 2 of the fifth part.

But in the normal course of events, it will be young people who marry, and their sexual intercourse will result in children. This now creates a society in a more proper sense of the term: a group of people cooperating for a common goal, with authority and all the rest of it.

Since children need to be raised to the point where they can function reasonably as adults, we can then say the following:

# Conclusion 19: The common goal of the family is to provide the conditions for the children's development into full human beings.

These "conditions" are the ones we listed above: the physical, emotional, intellectual, and economic conditions for their devel-

#### Section 3: Society

opment into a position where they can exercise their genetic potential as fully as they choose. The idea is not that they are to be forced to *be* everything that they are capable of being, or that the parents have a determining say in what they will be doing as adults (because that would deny that they are self-determining), but that while they are children, they are to be given (and forced to accept) all that they will need so that they will not be *prevented* from choosing whatever life they are genetically capable of because of lack of proper preparation. The choice comes *after* childhood, not within it.

# Conclusion 20: The transition from childhood to adulthood comes at the point where civil society starts considering what the person is expected to do for the cooperative benefit of all.

That is, childhood is the condition in life in which a person's own development is all that he is concerned with, and he is the recipient of the conditions for developing himself. Adulthood occurs when people start expecting him to do the cooperative acts required of the members of civil society, and it becomes irrelevant to the people around him whether this advances his own development or not. Adulthood, then, is the period in life when *civil responsibility begins*. The child is not held accountable for what he does (his parents are); the adult is accountable for his own actions.

Now if the family's goal is to make adults out of its children, then we can say this:

Conclusion 21: The family ceases to exist as a society when the last child reaches adulthood.

It of course may exist as a *community* long after that; but even this

sometimes breaks up as the children go to live somewhere else and lose contact with the other members of the family. But even if adult children are living at home, once they reach adulthood they are no longer under the authority of their parents as parents; they now would have some sort of contractual arrangement with them (however informally it might be stated) giving the rules for living in the house and what they are expected to do to live there, as well as the limits the parents have over meddling in their private lives.

It is important to distinguish the family as a society from the family as a community; because the confusion between the two can make some of the parties think that expectations are orders and that failure to conform to expectations is disobedience and flouting of authority.

The reason the family is a society and not a community is that children don't know enough to be able to make rational choices about their own development toward adulthood, and so will make disastrous choices if they are allowed to do so. Hence, they must be under threat to do the things that they need to do in order to reach adulthood when they will finally be able to choose for themselves.

And it is obvious that, since the parents jointly caused the children to begin to exist, each parent is responsible for what the child becomes, insofar as the adulthood of the child is due to the way he was raised. If you put this together with what was said in the preceding paragraph, the following conclusion emerges:

# Conclusion 22: The biological parents by nature have joint authority over their children.

Once again, this authority can be taken away from them only under the conditions of the Double Effect: that the rearing of the child would be significantly worse (i.e. that significant damage would

be done him) under the authority of his biological parents than under someone who was not responsible by nature for his being brought into the world.

If custody of the child is taken away from one or both parents by civil society, then these parents are not, of course, any longer responsible for what he becomes. But that does not make them not his parents, having a right to respect from him on the grounds of bringing him into existence, though not now on the grounds of being in authority over him.

The authority of the parents over the child is *joint* authority, not a divided authority, because each parent is *fully* responsible for there being a child, since each could have prevented there being one by choosing not to have sex (or by doing something to prevent conception).

In connection with this, the fact that in our country a woman may legally have an abortion the husband cannot legally prevent is a serious violation of the husband's right to rear and protect his children, which is an inalienable right which follows from his moral obligation to rear and protect children he causes to begin to exist. I might also point out that if the woman usurps absolute rights over the child while he is a fetus, even the "right" to kill him, then this usurpation takes away the legitimacy of her claim that the father support the child. In that case, the father is looked on simply as a condition for the woman to exercise her sexuality, over which she has complete control-which means that she and she alone has control over the consequences. You can't have it both ways; either the father is a real cause of the child, in which case, he has rights over the child because he has responsibilities, or the woman has all the causality, and the man was just a means for her choosing what she was going to do with her sexuality, and the man has no responsibility for any consequences she chooses to attach to it.

But this is, of course, nonsense. In fact, each causes the child to exist, and so each has responsibility over the child, and therefore the right to discharge that responsibility.

Since each parent is responsible for every aspect of the child's life, physical, emotional, intellectual, and economic, then the authority over the child's development cannot be divided, and is joint in all areas of the child's life. What this amounts to is the following:

# Conclusion 23: Neither parent may morally countermand any order of the other parent, unless that order violates some right of the child.

That is, if one parent commands the child to do something that the other parent does not think is the right to thing do, the other parent may not tell the child not to do it, unless he knows that the act is positively detrimental to the child. If he did, he would be undermining the authority of the other parent; each parent must *confirm* what the other parent ordered, and tell the child he must do what he was commanded.

If the child says, "But you told me yesterday I didn't have to do this," the answer must be something like, "That was yesterday. Your mother told you to do it, and so you have to do it." This sort of thing is not detrimental to the child's development because (a) one of the things he must learn is that foolish orders from legitimate authority must still be obeyed, as we saw in the preceding chapter, (b) that people have different ways of looking at the world, and even if they disagree, they can recognize that the other way of seeing things is legitimate, and finally (c) orders must be obeyed in the last analysis because they are orders, not because they are the most rational or best thing to do.

This is especially important because of the following characteristic

of parental authority: Since parents have authority in terms of the common goal of the society, which is the development of the children to full adulthood, it follows that

# Conclusion 24: Parents exceed their authority when their commands to a child have nothing to do with the child's development into an adult.

That is, when the command is not for the benefit of the child, the parent has exceeded his authority in issuing it. Children are *not* labor-saving devices or slaves that the parents have produced to make their own burden lighter. In the family, the parents exist for the children, and the children exist for themselves, not the family. Again, this is no economic relationship, but a cooperative one; but the children are the beneficiaries of the cooperation, not the parents.

Now this does *not* imply that parents can't assign chores to the children which do not in themselves advance the children toward adulthood, since, as I said just above, one of the most important things a child has to learn is the fact that commands to an adult are *not* directed at his own self-development; and further, the child must be weaned away from looking upon himself as the center of the universe and everyone else as his slave. For this very reason, parents *must* give children orders that they clearly see are not going to advance them anywhere. After the first couple of times, any child realizes that he has learned all he needs to know about taking out garbage; and he wants to pass on to greater things. Therefore, the fact that he must take out the garbage every week teaches him the important lesson that there are things a person must do for others whether they benefit him personally or not.

This lesson is so hard to learn that some parents shirk it, on the grounds that getting the child to do things he doesn't want to do is

much less trouble than doing them yourself—which is generally speaking true. But *for the child's sake* it must be taught; and so what I was saying above that all commands must be for the child's development in practice does apply even to the commands that seem superficially to be the very opposite.

Now this does not mean that commands should seem *arbitrary* to the child; he should realize that there is reason behind them, though not a reason, necessarily, that has anything to do with *his own* advantage. That is, the explanation of the reason behind taking out the garbage should not be, "We are trying to improve your education for living in the adult world," but "You're a part of this family too; and you're expected to do your share in helping it function." And when he says, "Why should I?" the answer should be, "Because you have to, that's all."

And if a child disobeys, he must be punished. It should be made clear to him that disobedience will be followed by punishment, which can be removed if the circumstances warrant, but which will ordinarily happen. Note here that a child expects parents to be angry with him if he disobeys; and so the parent has to walk the delicate line between terrorizing him by a display of anger and terrifying him with that sadistic kind of coldness which says with absolute calm, "Now Johnny, you didn't take out the garbage, and so tonight you don't get your dessert. You know that happens."

Is spanking legitimate punishment? Depending on the child, it can be, as long, of course, as it causes only pain and does no physical damage. Spanking on the buttocks is safest perhaps, because the child is most protected there against injury. It must be remembered that a child lacks experience, and his parent inflicting physical pain on him will seem at first as if his whole world is coming apart. That is, the effect of the spanking will be—at the beginning, at least—vastly out of proportion to the actual pain inflicted.

#### Section 3: Society

On the other hand, spanking as opposed to deprivation can teach the child that pain is *not* the end of the world, and that the parents love him even if they inflict pain on him, insofar as, once it is over, they act as if, having paid his penalty, he is now reinstated fully in their good graces. It is also educational in a positive sense for the child to learn that he can stand a certain amount of pain. It is very difficult to make any generalizations here, because children are so very different. I was just saying above that spanking is not to be ruled out because of some sentimental idea of child abuse, because other forms of punishment that inflict no pain at all (locking in a dark closet comes to mind) can be, depending on the child, much worse. One must follow what is the duty of any authority: to find the least severe punishment that will motivate obedience. My father, for instance, never hit me; it was enough that he would say to me in a quiet voice of barely controlled rage, "If you don't stop crying, I'll give you something to cry about!" to make my tears dry up on the spot.

As to whether obedience should be rewarded or disobedience punished, it is better to punish disobedience for several reasons. First of all, when you reward an act, you create an incentive that *that* act be done and nothing else; and this restricts the practical freedom of the person. When what you want to do by your commands (and this is most of them) is to set *limits* on the child's behavior, then rewarding him for the best conduct doesn't leave him any room to maneuver within what would be acceptable.

Secondly, a reward that keeps being given (because the behavior in question keeps being repeated) very soon is looked at as owing to the person because of his nature, not because of his actions. This also happens with animals. I have trained my dog to want a biscuit in the morning, because several times I gave her one as a treat, and now she simply expects it. The result is that withdrawing the reward when the

person did not obey is *seen as* a punishment by the disobedient person anyway. So you don't really escape punishing a person by offering rewards.

Finally, sanctions in society are going to be punishments, and it is necessary to get people used to the fact that if they don't do what they are told when they are adults, they will suffer for it; and when they do do what they are told, this will simply be accepted as the normal state of affairs. It would be disastrous to bring up a child to think that every time he does something that others expect of him, he is going to get some special recognition for his marvelous act. The real situation is what Jesus said, "When you have done all you have been commanded, then say that you are a useless slave."

One of the interesting things about parental authority is that, since they have it because of the common goal of developing the children toward adulthood, it follows that

# Conclusion 25: Parental authority diminishes gradually as the child grows older and more experienced, until it finally ceases altogether at adulthood.

In the beginning, parental authority extends over every phase of the child's life. Quite soon, however, as the child becomes able to handle, say, his toys for himself, the parents lose the right to tell him how he must play with them (aside from commanding him not to destroy them or use them immorally); they lose the right to dictate details of his relations with other children, other than seeing to it that nothing morally wrong is going on; and so on. As the child progresses in his education, the parent's authority over what he must study to prepare himself for adulthood grows less and less; and by the time he is in college, they have lost their right to determine his major field of study and what career he is to prepare for. A child in college

#### Section 3: Society

is still a child, insofar as he is still developing toward his full potential, and is being helped toward this by the people around him. But he is all but an adult, and is certainly *capable* of deciding what he wants to do with his life as rationally as he will be when he graduates. A child in college, in other words, is in a difficult position; he is mentally an adult, living the life still of a child who is not yet responsible. Parents have a difficult time here also, because for practical purposes they have no real authority over him any more, but they are still paying the bills.

Just as there is authority in the family, so there are rights. First of all, these are the rights of parents:

They have a right against their children *to be obeyed*, which includes the right to punish disobedience. This right diminishes, as I said, as the children grow up.

Secondly, they have a right all during their lives *to be respected* by their children, because they in fact caused them to exist. They have this right to respect, not because they are wise and saintly, but because the child owes his life to them, and they have given him uncompensated service which he cannot possibly repay (and which, in general, they don't want him to repay). In this sense, parents have a right *to be loved* by their children, whether they are lovable or not.

Children don't have to *like* their parents (though this is, of course, desirable); but they must *love* them, in the sense of accepting them for what they are and not evaluating them, and holding them in respect as authors of their existence. There is nothing more devastating for a parent than to find that his adult child contemns him; no one should ever be put to that torture, no matter how much he might he might have done to "earn" contempt. One of the most seriously wrong things an adult child can do to his parents is to hold them in contempt. I might note that the commandment by YHWH not to do this is next after his commandments dealing with himself.

#### Part Six: Modes of Interaction

Thirdly, parents have the right to live their own lives insofar as this does not interfere with the children's development. Certainly, after the children have grown to adulthood, they have no business telling their parents how they are to live. Unfortunately, this right is currently being exercised to the detriment of children nowadays. At the time I originally wrote this, my daughter worked in a day-care center and loved the children; and she saw more of them than either of their parents did. But (a) she did not have authority over them, except as delegated by the parents, and so couldn't direct their lives as they should be directed; and (b) if she had been transferred, they would have been under the care of someone else. Since day-care work is so badly paid, there is a tremendous turnover; and so sending your child to the center is nothing at all like having a nanny to care for him. The child is not helped by this environment; and the only reason it can be allowed is when the Double Effect applies and the damage to the child would be greater without it. Not the "damage" to the *parent* who might have to give up a rising career. The parents in the family exist for the child, not the other way round.

But this does not mean that the parents cease to be persons. When no damage is done to the child, the parents have their own lives to live. If Junior doesn't like the fact that mommy and daddy are going to the symphony tonight and starts crying when Deborah the baby-sitter comes in, then Junior has to learn that mommy and daddy are not his slaves. I once left my year-old son in the hospital where he had some childhood disease. As I walked out the door, he was screaming and carrying on; but as it happened, the corridor had a window that looked back into the room, and as I passed it, I saw him look at the door, realize I wasn't coming back, stop crying and settle down with his pacifier for a nap. Kids are nothing if not manipulative.

Fourthly, parents have a right against their children to be

*supported* in their old age, if they cannot support themselves. The parents gave uncompensated service to the children when the children were young. The children have to return that service if the parents need it. Note that this does not mean that if the parents aren't living up to the standards the children think "proper," and are satisfied with this life style, the children have any right to interfere in their lives and force their attentions on the unwilling parents. It can be a delicate task giving often cantankerous parents the help they need without trying to dictate their lives for them.

Fifthly, parents have rights *against those outside the family not to be interfered with in bringing up their children according to their own consciences.* They are the ones responsible for their children, and so it is *their* consciences which must determine the direction the children's lives are to take, and no one else's.

Civil society can step in and force the parents to do certain things only using the Double Effect, when what the parents are doing is positively deleterious to the development of the children. If parents refuse to educate their children, then the society can force them to give them at least the minimum of education to be able to function as adults; and in so doing, it must supply the *means* by which the children can be educated without harming the parents financially.

But this can be said in this regard:

Conclusion 26: Civil society cannot morally set up roadblocks in the way of parents' educating children according to the parents' conscience.

That is, if the parents think that the children must be given religious and not secular education, then (supposing that the religious education meets the minimum standards for functioning as adults), the civil society has no right to hide behind something like

"separation of church and state" and force the parents to send the children to secular schools by making it financially impossible or difficult to send them to religious schools. Vouchers for education leaving parents free to send their children to the schools their consciences demand are a *moral necessity* in society.

A lot is said nowadays about the rights of children; and they do have them. But they don't have the right to dictate to their parents how they should be brought up. These are the rights they do have:

First, children have the right against everyone not to be physically, emotionally, or intellectually damaged. These are the basic human rights that everyone has. Children have the right, for instance, not to be subjects of pornographic pictures, even if no physical harm is done to them. Robert Mapplethorpe, who has appeared several times in these pages, photographed some children (with the consent of their parents) displaying their genitals. Even if this is art, it is a crime, because it is using children to do what they couldn't give informed consent to, and which as adults they would be morally obliged to refuse to do. This is not to say that photographing an infant naked in his bath, say, is morally wrong, when the picture cannot be construed to be in any sense sexually provocative.

Children also have the right against their parents to the means necessary to grow into adulthood; and this, as I have said several times, includes the physical, emotional, intellectual, and economic means. They have a *right* only to the minimum necessary to be able to function as adults in society; what is beyond this cannot be demanded, even from their parents. If parents cannot supply this minimum, the children have the right against civil society.

Thirdly, children have the right to be respected as persons, and not treated as objects or slaves. They are not the equals of their parents, of course, and need not—in fact *must* not—be treated as such; but they *are* self-determining beings, and when they do favors

#### Section 3: Society

for their parents (as opposed to merely carrying out orders), they have a right to be thanked by their parents. If parents demand politeness from their children, they should realize that they have an obligation to show politeness to them.

Fourthly, children have a right to have their view of things heard by their parents. They do not have the right to be "listened to" in the sense that their view should prevail or be taken equal account of; but they do have information about their lives that their parents wouldn't be aware of unless they told them; and so they have the right to make this known to their parents.

Fifthly, children have, especially as they grow older, an increasing right to *privacy* against their parents. This right is based, as I said, upon a person's practical inability to inform any other person about everything dealing with himself; and therefore, information which is not relevant to the other's performing his duty need not be revealed. At the beginning, since parents must direct children in absolutely everything, the parents have a right to know everything about the child; but as time goes on and the parents' authority lessens, their right to know about the child lessens also, and they must leave areas that don't any longer fall under their jurisdiction (such as details of school or play life) to the privacy of the child, letting him know that he *can* reveal anything he wants and that they will listen with interest and respect, but that he *need* not reveal it and they will not think he is keeping secrets from them.

This is another difficult area (if there are any in child rearing that are not difficult), because parents have the obligation to see to it that children are not getting into trouble. Children have to trust their parents, or they will hide things from them; but in order to trust them, they must be allowed not to reveal everything to them, proving to themselves that the parents trust *them*. A child who thinks his parents are spying on him because they expect him to go astray

as soon as he is out of eyesight is in serious danger of living up to their expectations.

But beyond this, this treatment of the family would become a book on child rearing, not on philosophy; and so let us leave the subject here.

## Chapter 4

## Civil society

The family is one society that a person can't help belonging to; civil society is a society that a person must belong to. The reason is that, if there are people around you who can interfere with your self-determination, you can't really defend yourself against them all and protect all your rights. That is, if the condition of mankind really were the Hobbesian "war of everyone against everyone else," then life would not be livable (as of course Hobbes held). Even if others were well-intentioned, it doesn't follow that they would be aware of all your rights (or be convinced by you that you had them and weren't making empty claims), and so might interfere with them without knowing they were doing so; and you can't fight everyone.

Hence, people must cooperate with each other to see to it that everyone's rights are respected. And this is the function of civil society.

*Civil society* is the society whose common goal is the common good of the members.

You will recall that I said that the common good is the rights that the members didn't freely give up upon entering the society, not some "benefit" or "welfare" of the members collectively (any

benefits beyond those *necessary* to prevent violation of rights belong within the common *goal* (not the common good) of a society which bestows them).

Every society must have the common good of its members in view, of course, or it would be dehumanizing its members; but this is civil society's *sole purpose*. Any further purpose for it would be something that is not necessary for human existence, and therefore it would be contradictory to *force* people to be in the society; because that would make it necessary for the members to cooperate for something that was not necessary for them. There is nothing wrong with people's cooperating for some non-necessary goal; but it would be morally wrong to *coerce* a self-determining being to do more than what is necessary to avoid harm to other people.<sup>80</sup>

But, as I said, it is necessary for people to cooperate to see that no one is dehumanized; and therefore, people *must*, morally speaking, belong to the society whose common goal is this. Hence, if civil society had any common goal in addition to this, the members (a) would have to belong to it, and (b) would then be forced into

<sup>&</sup>lt;sup>80</sup>I suppose what is behind the Scholastic notion of the "common good" as the "welfare" or "benefit" of the members is, first of all, the notion that "good" is something objective that someone can know for someone else (whereas it is the freely chosen goal of the person himself), and that people can't live "really human" lives without civil society. Hence, civil society has a function of conferring *benefit* on its members. But when society confers a benefit, it tends to force it on the members, and they have to take it willy-nilly, which means it diminishes their self-determination, and so is dehumanizing. Practically speaking, even if it does not force members to accept benefits, the fact that they are there for the taking creates the pernicious incentive in the members a) to accept them without bothering to do anything to deserve them, thinking they have a human right to more than the minimum, and b) to rest content with them rather than exerting themselves to develop themselves further. This last we see all too often in members of welfare states. No, St. Paul was right: "If a person does not want to work, he is not to be fed."

cooperating toward a non-necessary goal.

Therefore,

Conclusion 27: Civil society can have no common goal beyond seeing to it that the members cooperate to prevent dehumanization of any member (the common good).

Given what we said above, if this is the common goal of civil society, it follows that

# Conclusion 28: Every person who lives among a number of other people must belong to civil society.

Presumably, Robinson Crusoe wouldn't need to declare himself a civil society of one; and the Swiss Family Robinson could make do as a family (though you could argue that it became a kind of civil society also). But in all other cases, rights cannot be protected without cooperation among all the members.

Some terms:

### Government is the authority of civil society.

### A citizen is a member of civil society.

Of course, "government" with a qualification can refer to the authority structure of any society; but when it is simply "the government," one is talking about civil society.

Traditionally, the family is called the "unit" of civil society, as if it were the "atom" of which the civil society is composed. But this isn't quite accurate, because, using the Double Effect, this atom is splitable, and government can sometimes step in and take children

away from their parents (if they are harming them) or force separation of spouses (if one is harming the other). Clearly, then, the *individual* is the member, not the family, because civil society is (rightly) concerned with the individual's rights, and only secondarily with the family's rights as such (i.e. insofar as functioning families are necessary for the human existence of the members). And this makes sense, because it is the individual who is self-determining and a person, and therefore the one who actually possesses rights. Rights of groups or societies are not human rights, but follow from the rights of the people who make them up.

The family is the "unit" of society in the sense that society, as we will see, must protect and foster family life, because without protection, the family will collapse, and various rights of the members of the family will be trampled upon. In our society now, for instance, economic pressure is such that it makes it difficult for one parent not to work, even to the detriment of their children. Recognizing "living together" as the equivalent of marriage, recognizing "gay marriage," and recognizing divorce, militates against the commitment necessary to secure the rights of the spouses, particularly of women, and children. And so on. Hence, though civil society is not an organized aggregation of families (which is what "the unit of the society is the family" sounds like), it is still true that protection of the family is one of civil society's prime duties-one that it is failing miserably to fulfill in the present-day United States. And if the family rather than the individual were the "unit" of civil society, what would we do with adults who do not belong to families? So the theory that the family is the unit of civil society can't hold water.

Since *every* human being in contact with those around him needs his rights protected, then it follows that every human being in this situation who *can* engage in cooperation for this goal must do so if

called upon. But presumably, this would exclude those who are just passing though the society. They can, of course, be forced to *do nothing to interfere* with anyone's rights; but it doesn't seem reasonable to *enlist them to help in securing* the rights of the people they happen to be visiting.

This allows us to define who a citizen is:

A *citizen* in the fullest sense of the term is any adult who was born into the society and has not become a citizen of some other country.

By being "born into" the society is meant being born of parents who are citizens, not necessarily being born within its territorial limits. I should immediately say, however, that, though this is the traditional formulation, *it includes fetuses and embryos*. A judge has recently ruled on a custody case of frozen embryos, for instance. Hence, rights protection must extend even into the womb, as it does not in the United States today, I must say to our lasting shame.

But a child who happened to be born within the borders of a country as his parents were passing through could not be expected, on reaching adulthood, to cooperate for the preservation of the rights of the citizens if he never even saw the place since a week after his birth. He might, if the country desires, be recognized as a citizen in the sense that, if he later chose to join the country, it would not exclude him.

The full citizen is an adult, of course, because he can be expected to cooperate for the society's common goal. *Children* born into the society are beneficiaries of the society's action on their behalf, but are not expected to cooperate. Some societies may prohibit giving up membership (in some, this means that if you join another country, you still retain your citizenship; in others, this means you can't join

another country), because in fact there is no human right to belong to whatever country you want to belong to, since no damage is done you by belonging to any given country unless it is failing in its purpose—and rights claims, as I said in Chapter 4 of Section 1 of this part, can be made only if damage in not doing the act can be shown. But in societies which permit leaving, then a person loses his citizenship when he joins another country.

A given country can as a *privilege* grant citizenship to those not born into the society. This is called *naturalization*. Once the person has been naturalized, then he possesses practically all the rights and the obligations of any native citizen (though he may be excluded from belonging to government, for instance). Since this is a privilege, then obviously the government can make whatever rules it wants in granting it. Similarly, government can extend *resident alien* status to other people, giving them as a privilege some of the things that citizens have as rights, and withholding others, and imposing on them some of the duties of citizens and not others. Resident aliens in the United States, for instance, are not allowed to vote, but must serve in the armed forces if there is a draft. Lesser privileges are granted to visitors and others who may be in the country for a time; visitors to the United States are not allowed, in general, to be employed here, for example.

Now then, since the common goal of civil society is solely the protection of the rights of the members, then Two Great Principles determine how it is to do so:

The First Great Principle of civil society: the Principle of Subsidiarity: If an individual or smaller society within civil society can perform some function for himself or its members, then civil society must not take over that function.

### Section 3: Society

That is, *civil society must let the citizens fend for themselves as much as possible.* The reason for this is, of course, that citizens are fundamentally *self*-determining beings who have their own lives to live, and civil society (as necessary) *forces* them into cooperating (i.e. doing things which do not promote their own goals); hence, civil society must let them alone *unless it is necessary* to enlist their cooperation because someone's right would be violated without their cooperative activity.

Now then, I part company with libertarians in not defining "protection of the citizens' rights" as narrowly as they do. Libertarians tend to think that the only way you can violate a person's rights is to do something active to harm him; but it is also, as I said in Chapter 4 of Section 1 of this part, possible to violate a right by *not* doing something *for* him. For instance, parents who don't give a child enough education so that he can read well enough to function with ease in adult society are violating his right to be brought up intellectually.

Here too, civil society's duty is not merely to see to it that no one murders anyone else or steals from anyone else, or rapes or fights with or cheats anyone else. Each of us is born with different physical, emotional, intellectual, and economic resources available to us; and in some cases, these resources are so meager that we can't really function as human beings in the society. You will recall that in speaking of dehumanization in Chapter 3 of Section 7 of the fourth part, I said that it occurs below the minimum that would be taken for granted that "everyone" can do in a given community: the lower limit for what we in the community call "human existence." This, as I said, varies from community to community. I mentioned also in that chapter that a person needs at least something more than the *bare* minimum in order to live a human life; because if all he can do is survive, then he is incapable of doing the main thing that

distinguishes human beings from all other animals: choosing a goal for himself and moving toward it.

Thus, for example, if people cannot find work near their homes, they need *transportation* available to them (and at a price that is not going to eat up all they earn just getting to and from work); if there are rivers in the way between home and work, there have to be affordable ways of crossing them.

But in practice, roads and bridges are just too expensive to be able to be supplied by private societies, in most cases; and so it is a legitimate task of government to supply such things to the citizens; and since not everyone can afford an automobile or taxi, government also must see to it that public transportation is provided at a cost which is affordable. And so on.

No one denies that there has to be a police force and a fire department; and almost no one says that government's role is to supply bread and circuses to the citizens. But between these, there is a rather broad area where it is not perfectly clear whether supplying the necessity is the government's task, or whether it should be left to the private sector, with government only stepping in to see that the private companies do not take advantage of the fact that they are supplying necessities. For instance, can garbage collection be better done privately or publicly? What about sewage disposal? The purification and supply of water? Electricity? Home heating? Communication, such as mail? Libertarians contend that all of these can be done more efficiently by the private sector—and there may be some truth in that; but the problem is not whether it can be done most *efficiently*, but whether the service is *available to all who need it*, *and at a cost that doesn't force them to give up other necessities to get it*.

That is, if ninety per cent of the population can send and receive mail when competing private companies manage it, and these ninety per cent pay little enough so that none of them are deprived by it;

but if the other ten per cent either are not served at all, or are served at a price that makes it prohibitive for them to send or receive mail, then government must do something to see that these ten per cent can also have affordable mail service.

One of our problems today is that this also applies to health care services. At present we have private health care service; but the price is outrageous; While I was writing this in the 1990s, I heard on the radio that the cost of high-risk care for a pregnancy is a hundred thousand dollars! That (for any of you readers who don't live in the century I write in) was more than three years' quite good salary at the time. Obviously, people on any normal living scale would be wiped out by just one bill like this. Government must do something to see to it (a) that those who are gouging the public and making themselves rich be prevented from doing so, and (b) when costs are down to merely decent living for the providers and waste and duplication is reduced to reasonable levels, those who still can't afford health care are able to receive enough to avoid dehumanization.

It is not my purpose here to try to say where to draw the line. If you think that I incline toward the libertarian side, you are right (or should I avoid that word in this context and say "correct"?). Having been rather on the left in my youth, and having seen as I grew up what a disaster comes from government's management of things and especially from government's benevolence, I am personally convinced that government does far, far less damage if it stays as close to the absolute minimum than it does when it interprets "dehumanization" so broadly that government must intervene to supply cures for hangnails. But I am perfectly willing to admit that there is room for wide disagreement here on what constitutes dehumanization; and within reason, there is no way of making an objective assessment of it. The reasons for this realization should have been clear from

Chapter 10 of Section 5 of the first part, on goodness, and Chapter 2 of Section 7 of the third part, on values and goals.

The point is that government's attitude *must* be that of *avoiding* harm to the citizens, rather than doling out benefits to them. That notion of "giving from compassion" is insidious for three reasons: First, insofar as government gives things to citizens that they could get by their own efforts (even if by considerable efforts), it creates incentives for them to do nothing and just receive from government—and thus they abdicate their self-determination (their very selfhood) for a mess of pottage. When I asked the retarded man who lives down the street from me if he'd found a job (he's had jobs before, and there are plenty he can do), he said, "I can't work, because then they'd cut off my social security payments." So he sits at home and listens to music, he told me, and occasionally mows lawns.

Secondly, this sort of thing feeds on itself. The more people government gets dependent on itself, the more "compassionate" it gets, because we like to help out those who "can't" help themselves; it makes us feel our lives are really worth while. And the more people it tempts into dependence on it, the more insistent it gets that it needs more and more from the rest to supply their "needs," because "look at how many people depend on what we are doing even now!" But, as the Communist countries have shown in the very year of my original version of this book, this progression is a classic "catastrophe curve," in which things go around in the spiral up to a certain point, and then suddenly fall back to the lowest level, and the whole economy collapses. It is sad, because it is a corruption of our noblest instinct.

Thirdly, this increasing "entitlement" by the lower classes in the society to things that they could with difficulty get for themselves takes more and more from those who have by their own efforts (or

those of their parents) raised themselves up to their standard of living, and gives the impression that they by working and earning more than they need have "taken it away" from the poor. This is not so, as I said; value is *created* by entrepreneurs; they are not engaged in an invidious "distribution" of the available wealth; they are making wealth where there was none before. They have, as I said in discussing the right of ownership in Chapter 3 of Section 2 of this part, an obligation to give some of their surplus to prevent dehumanization of the needy; but they have the obligation only to this extent. To force them into giving more than prevents dehumanization because of some notion of "equalization" or "redistribution" of the wealth of the society is a violation of their rights. Yes, they have rights, which must not be violated for the "good" of anyone whatsoever; it is only in the name of protecting the unwitting violation of others' rights that the cooperative act of taxation can be justified. It is here where "the politics of envy" rears its ugly head.

Hence, wherever one stands on how much government must do for the citizens, one stands in the wrong ballpark if he thinks that government must promote the "common good" or the "welfare" of the citizens in the sense of giving them *benefits*. Any benefits government gives anyone are taken away from someone else; and to the extent that the beneficiary is not dehumanized by not having the benefit (and how are the elderly who have hundreds of thousands of dollars in the bank dehumanized by not receiving a social security check?), to that extent the government is guilty of extortion.

That's the First Great Principle. Here is the other one:

The Second Great Principle: The Principle of Least Demand: When government makes demands on some citizens to prevent dehumanization of others, it must make the smallest demands on

## the fewest citizens possible.

This is just the opposite of the utilitarian principle of "the greatest good of the greatest number"; it is the "least bad to the smallest number" consistent with getting the job done. This may mean that the job doesn't get done most efficiently; but efficiency isn't the point of civil society (certainly this would seem to be empirically verified), but the fact that people must be left alone except to the extent necessary to prevent dehumanization. Since people are forced to be in civil society willy-nilly, then there is no reason for them to engage in cooperative activity just for the sake of establishing solidarity, but only when that cooperation is *necessary* to ensure the minimal human living of every member. Hence, it might be that some members (the crippled, for instance) might not be called upon to engage in cooperative activity at all-even though they might receive assistance from the other citizens through government. The point is that the richer citizens should be taxed more, not to "redistribute the wealth," but because their activity is curtailed *least* by taxation; and the fewer people and the less they are taxed, the better.

It is because the function of government is preventing dehumanization that the "distributive justice" I spoke of in the preceding chapter applies mainly to civil society. I said there that distributive justice amounts to the fact that government takes most from those who need government least (because they have more than enough to get by on their own and by the Principle of Least Demand are inconvenienced least) and gives most to those who contribute nothing to society (because these, of course, are the people in a dehumanized condition). That is, you can't contribute if you are yourself below a human level of existence; and so you are the recipient of government's help—and this is just, since it fits your reality. But because people are to be left alone as much as possible,

4: Civil society

396

then it follows that it is just to demand that the most capable (it fits *their* reality) do most for the others, rather than having those do it who would be hurt more by doing so.

Since people are self-determining and therefore to be left to their own devices as much as possible, it does not follow that a person who is starving because he refuses to work and who can by working earn a decent living must be kept from starving by government, on the "compassionate" grounds that he will die if someone doesn't help him. I mentioned this in dealing with the right of ownership in Chapter 3 of Section 2 of this part. Nor must government intervene to protect a person from any other self-destructive behavior such as taking drugs if he knows what he is doing and freely chooses it. Government may have an obligation to disseminate *information* about dangerous behavior so that citizens don't unwittingly bring damage on themselves; but if they want to destroy their lives, then it's their lives. This always supposes, of course, that what they do to themselves is not simultaneously violating some other citizen's right.

Conclusion 29: Government may not intervene to prevent self-destructive conduct on a citizen's part unless this conduct violates someone else's right. This includes refusing payment for necessities to those who can work but refuse to do so.

This also means that government can't "legislate morality." That is, if there is some conduct that is morally wrong, but engaging in it doesn't violate anyone's *right*, then government can't pass laws to stop it. It can perhaps pass laws to *prevent the promotion of it*, on the grounds that morally wrong conduct is self-destructive and people should not be allowed to tempt others into doing harm to themselves; but it can't legislate against the behavior itself unless it can show that by allowing the behavior, someone's rights are in fact

violated.

For instance, government can't pass legislation prohibiting contraception, even if it is known that contraception is morally wrong. True, the "contraceptive mentality" is socially destructive in all sorts of ways, and inevitably leads to violations of children's rights and the destruction of the family; and so government can suppress organizations and people who *promote* such a thing, just as they can suppress drug pushers. But they can't try to prevent people from using contraceptives, or from using drugs, for that matter. Similarly, if two homosexuals want to engage in sex, even sado-masochistic sex, and they know what they are doing, and they are not trying to "recruit" others to the practice, then government has no business prohibiting this by law.

On the other hand, if a woman wants to have an abortion, government can prevent her from getting one, because, no matter how much she may think she is only "doing what she wants with her own body," in fact there is another person within her body whose rights she is violating; and that other person must be protected to the extent that government is capable of protecting him. "Back alley abortions" are no excuse for not doing this, any more than "back alley murders" are any excuse for repealing the laws against murder.

Sometimes people can't do what they want on their own, but can do it if they get together into a society whose common goal is the task they want to accomplish. Since such free association leaves them more in control of their own lives, government must not step in to fulfill the function, and must let such societies exist, as long as they do not violate any citizen's rights.

Conclusion 30: Government must allow formation of lesser societies inside it, as long as these societies violate no one's rights.

### Section 3: Society

The relation between government and other societies within it is negative: government is to leave them alone as long as they are not violating anyone's rights (as long, in other words, that what they are doing is lawful); and the societies are not to try to subvert government's function. That is, something like the Communist Party, one of whose aims is revolution against the government and its replacement with a Communist one, may be outlawed, as may organizations such as the Ku Klux Klan, whose purpose is the degradation and disenfranchisement of Black people.

A word about the relation between church and state. The "separation of church and state" has been interpreted in a stupid manner (to be charitable about it; it looks invidious on its face) by Supreme Courts recently, as if government had to be so careful to keep away from religion that in effect it had to promote secularism to the exclusion of all religion.

The point is that government may not establish one religion that all citizens must belong to, or promote a religion in such a way that a person is pressured into giving up the religion he holds and adopting the one that is in government favor. This would violate a person's conscience. But this does not mean (a) that government cannot recognize that various religions exist, (b) that it cannot hold a religion in deep respect, (c) that it cannot make references to the religion that most citizens hold-as long as it does not show contempt for any other religion. But, for example, allowing Christians to set up a crêche on public property simply acknowledges that Christians form a significant part of the community, and does not pressure people into being Christians, especially if Jews can set up a Menorah on public property and other religions can use public property to call attention to their own solemn days as well. To the atheists who are offended, my answer is that no damage is done them by acknowledging that those who disagree with them may speak out

in public also.

What government must *not* do is *hinder* the free exercise of any religion, unless the exercise of that religion violates someone's rights. That is, using the Double Effect, government can prevent a religion from practicing polygamy, since this is dehumanizing to women, who in effect are made slaves to the husband. It cannot, however, forbid a religion from using peyote or alcohol or some such drug in its ritual or practice, unless this behavior is (a) self-destructive, and (b) the worshipers are the dupes of the leaders of the religion and think that the harm will not come to them. For instance, snake handling can be forbidden, once it is established that the handlers are not immune to being killed by the venom.

But avoiding "entanglement" with religion in effect stifles the free exercise of religion. For instance, ensuring absolute secularism in public schools ensures that those children whose parents cannot afford to send them to religiously oriented schools will have their faith undermined—and violates, as I said, the right of the parents to educate their children according to their conscience.

One final note. "Religion," technically, does not involve a belief in God, since Buddhism and Confucianism do not require a belief in God, but a set of rules that must be adhered to, such as a required moral code. And it turns out that contemporary secularism, with its demands to protect the environment, its strictures against discrimination (the whole complex called "political correctness" nowadays, which even forbids the "masculine" pronoun in its generic, neutral sense), is in fact a religion. And so the Supreme Court, in its insistence on separation of Church and State, is in fact establishing a religion in this country: the religion of atheistic secularism. That particular religion is favored to the expense of all the others at the moment, as can be seen from the insistence that it be taught in our schools rather than, say, the philosophical view that

### Section 3: Society

proves that there is a God, and that evolution is not blind.

On the other side, the church has no business involving itself in purely political matters. This is not to say that it has no right to try to defend the citizens of the country against some assault on their morals or beliefs because of some misguided view of those in government. For instance, if government allows abortions, then the churches have every right to put pressure on government to get the law revoked; because this is not only a moral issue, but an issue of human rights. But a religion has no business trying to get laws passed against contraception, say, on the grounds that allowing contraception allows something which is against the principles of that religion. Even if the religion were powerful enough to succeed in getting such a law forced through the government, it would be morally wrong for it to try, because it would be using the power of government beyond its authority, which is solely the protection of rights, not the creating of virtuous (or even prosperous) people.<sup>81</sup>

<sup>&</sup>lt;sup>81</sup>On the Catholic Church itself as a society, it is a peculiar one, in that it is not an organization, but *the visible aspect of a person*. That is, everyone who believes in Jesus as God and in his teachings shares in his life, as Paul said, and becomes a cell in his body (because parts of a living body live with the life of the whole, and this supernatural life—the life of Jesus—is the same for all Christians). Hence, the Mystical Body is one person, whose name is Jesus, not a society of people working for a common goal. Further, each Christian is under the direct inspiration of the Holy Spirit, who is his internal supernatural life, and so is not as such under orders from any human authority.

But then why are there churches with their organizational structure? Because it would be absurd to say that this collective person who all Christians are is *totally* invisible, even though the cells that make up this collective body are visible. There must be a sign, a sacrament of the unity of all these believers to indicate that they are all united through their faith. But the uniting of many persons, as something visible, is a society. Therefore, there must be a Christian community, which has a society, with its common goal the preservation of the facts about Jesus and his teaching. And this society, I believe, is the Catholic Church. Thus, the Catholic Church must exist.

The church-state dilemma, then, is not resolved by trying to decide which is "more important" than the other, so that one can supersede the other; or even in trying to define "spheres" in which one has absolute say and the other doesn't. Insofar, for instance, as people have a human right to what we might call "access to the Infinite," then government has an obligation to see to it that citizens have means with which to worship, even though this is not the "temporal sphere"; and insofar as the Church thinks that education is not education unless all aspects of it are related to God, then the Church is not solely involved in the "eternal sphere." *Neither's* function *overrides* the function of the other, in the sense that one's

Those who recognize that there must be a visible society, and who see that the Catholic Church is that society, must belong to the Catholic Church, under pain of refusing to unite themselves with the other members of the mystical body. Those who do not see this particular society within Christianity as the true preserver of Jesus' teaching of course are absolved from this duty.

For those within the Catholic Church, the authority of the hierarchy is a *teaching* authority only. That is, the presumption is that the Holy Spirit does not contradict himself; and so no private inspiration to a given person is going to contradict what is publicly taught by the Church itself; and private inspirations will not be necessary to duplicate what is taught publicly. That is, a person baptized as a Christian is not going to get the Holy Spirit whispering in his ear everything he ever needs to know about how to live life as a good Christian-not when he could get it by listening to other cells in the body whose function is precisely the dissemination of that teaching. That's one function the Church has through its hierarchy. The other is to act as a check on inspirations that the person thinks he is getting from the Holy Spirit. Since Satan dresses up often as an angel of light, any prudent person needs help to distinguish which spirit is inspiring him. The Church performs this function. If it says that a given doctrine a person thinks is true is false, then this means that the doctrine was not inspired by the Holy Spirit. If it says that a given action must not be performed, this means that the Holy Spirit does not want it done. But if the Church says nothing, then it is the indwelling Holy Spirit who inspires the Christian, and he doesn't have to wait for orders from his Bishop. In that sense, the Bishop acts by way of vetoing things, not ordinarily as a conduit for orders from the Holy Spirit.

"sphere" allows it to *violate* a function of the other; as is the case with all rights, each can do what it pleases as long as no right of the other is violated.

Let me now spell out a little more specifically the basic functions of civil society:

First, there is the protecting of the human rights of the citizens against attacks by other citizens. Beyond stating that this should be a protection, not only against actually battery or overt attack, but also assault, or threat of the use of violence, this needs no comment.

Secondly, there is the protecting of citizens against *economic exploitation* by other citizens. I said in Chapter 3 of Section 2 of this Part that it is possible to violate a person's right by depriving him of necessities as well as by physical violence; and so government has the obligation of protecting citizens against this sort of harm also, as well as the coercion of citizens by means of threats of deprivation.

Thus, government has the right to pass laws against *cheating*, *against charging inhuman prices for necessities, and against offering inhumanly low wages for work*. Since these laws are to prevent dehumanization only, they must legislate no more than the minimum necessary for this purpose; with respect to setting a minimum legal wage, for instance, the strictures I mentioned in Chapter 3 of Section 2 of this part would apply.

Also in the economic sphere, government has the function of *defining what is to be used as money* and of *keeping its value stable, so far as is possible.* I mentioned in Chapter 6 of Section 2 also how necessary this was for transactions to be meaningful; and it is only government which can see to this task.

Government, of course, has the task of *seeing to it that contracts are enforced*; and since people can be dehumanized by being held to contracts when conditions change making it unreasonable to be held to them, government can pass laws *regulating the conditions for* 

### bankruptcy.

Government must also *supply necessities to those who cannot get them for themselves* or by joining other organizations which can supply them. Government is in one sense the supplier of last resort here, actually, to be used when individual effort fails. I did say, however, in discussing economic necessities in Chapter 3 of Section 2 of this part, that government should be the one which hands out the minimum necessities, because these are what people have a right to against the population at large, and that this is the only way that the necessities can be supplied without the recipient's being placed in the invidious position of having to be grateful for receiving what he has a right as human to receive. But government must not do what is beyond the minimum, because it creates, as I said, disincentives for people to advance by their own efforts and violates the rights of the more affluent citizens.

Government must provide certain things that are necessities, but are not usually recognized as such. There is a certain minimum *recreational opportunity* below which people are dehumanized; and so government must make public parks and also such intellectual services as libraries available to those who cannot afford to pay for entertainment. Government, of course, must *supply enough education* to be able to function decently in society; but it must do so, as I mentioned, in such a way as not to force education on children which violates their parents' conscience. Insofar as public worship is a necessity for human beings, as I mentioned in Chapter 2 of Section 2 of the fifth part, then government must supply *means of worshiping* to citizens who cannot find the means for themselves or by lesser societies. In any society I know of, this function is in fact adequately taken care of by religious groups within the society, and is only a function government has in theory.

As to the rights civil society has, it can be seen that, since if it

4: Civil society

## 404

can't function, the citizens can't lead human lives, it has the *right to* exist and to function according to its constitution. The damage done in violation of this right is at least as serious as the damage done in killing a number of people, because in effect if civil society cannot function, it is likely that a number of its citizens will in fact die.

Therefore, civil society has a right to defend itself and its form of government against attacks both from within and without.

As to attacks from within, this means that if the only way to defend itself and its citizens is by passing laws with the death penalty attached, it has a right to impose the death penalty, and to carry out the sentence if someone is duly convicted. I discussed this earlier.

With reference to attacks from without, civil society has a right to go to war to defend itself, and therefore to demand that citizens serve in the armed forces for this purpose.

Here is where the famous "just war" controversy arises. This has for centuries been confused by people's talking about it in terms of "the good," when in practice they have been saying that the nation cannot go beyond the minimum necessary to defend itself.

To clarify the issue, a nation may take any action necessary to block an attack on itself, choosing, by the Double Effect, solely its own defense and not any harm to anyone on the opposing side. Of course, this would also include defense of allied countries, or even of a country with which one does not have a particular alliance, if it is being overrun by some other country. But, as I mentioned earlier in discussing defending rights Chapter 5 of Section 1 of this part, a nation may not go to war unless some attack on it (whether military or even something like economic) has actually begun. A preemptive strike to make another country incapable of attack is not justified even if it has spoken belligerently, because then the harm of the country is the *means* to the safety of one's own country.

Secondly, the nation can only take military action against what

*makes sense in the context of war*, and not against activity which would also be done in peacetime. Thus, you can destroy attacking armies and their supply lines, and you can bomb munitions factories; but you can not morally bomb whole cities or destroy the food supply of the other nation, however efficient this might be in bringing the war to a speedy close. The reason is that these aspects of the other society don't constitute the other society *as attacking you;* and so the statement "I was *only* trying to defend myself and block their attack" is a sophism; you also want their harm, if only as a means to your defense. Remember, the other nation does not "deserve" harm even if it attacked you for grossly immoral reasons; certainly the other nation's citizens don't deserve harm, and that's who you would be harming.

Note that a nation may not refuse to go to war to defend itself if this is the only way that it can be defended. That is, as I mentioned earlier, a nation is not allowed to "turn the other cheek" as an individual is, and have its rights trampled on for the sake of peace. The reason is that the moral obligation of the society is to protect the rights of its citizens, and to the extent that it is being harmed, its citizens' rights are being violated. An individual may use the Double Effect to accept personal harm for the sake of avoiding the harm to his attacker that would come if he defended himself; but a government does not have this luxury, because it has no right to demand that its citizens submit to the violation of their rights as long as it has means to prevent this.

So much for the society's right to exist. Obviously, if it has the right to exist, government has *the right to pass laws and impose sanctions for their violation*, insofar as these laws are necessary to avoid dehumanization of the citizens. Hence, it can pass laws dealing with all of its functions above, and require cooperative action, using

the Principles of Subsidiarity and Least Demand, from its citizens.<sup>82</sup>

Connected with these laws and government's function of supplying necessities to those who cannot get them for themselves, government has the right to *tax the citizens*, and this implies the right to *assess their ability to be taxed*, so that it can know how much to exact from each citizen so that it can apply the Principle of Least Demand to taxation.

I might remark that the money levied in taxes becomes the government's money, to be disbursed as it sees fit; it does not remain somehow the citizens' money. Citizens have a right to protest the government's performing illegitimate services, but not really on the grounds that "you're using my money to do what I have an objection to." The government isn't using your money, any more than the man you bought your computer from is using your money to visit a brothel, or you used your employer's money to buy the

<sup>&</sup>lt;sup>82</sup>As to commanding the citizens to defend it, then it would seem to me that the Principle of Least Demand would imply that not all citizens need be conscripted into the military, but only those whose conscription would cause the least disruption to the fewest number of people. This would seem to mean that it would be most reasonable to take disproportionate numbers of young unmarried men who have not yet got established in careers. The notion that women "ought" to serve in the military too is one of those equality fetishes that simply makes no sense. Supposing that women are equally capable as men of combat (a supposition I see no special reason to deny in our mechanized armed forces), it does not follow that having both men and women fighting together involves the smallest expenditure of personnel and resources consistent with getting the job done. Fighting a war is by no means an "opportunity" which should be offered equally to men and women, according to the "capacity" of individuals (or their "vocation") to do it. Any person who wants to engage in military service, which involves killing people, probably shouldn't be in it, because he'd be using it to satisfy blood lust. War must be engaged in as reluctantly as possible consistent with its success, and using as few resources of the society, both human and non-human, as feasible.

book you are now reading. Once the money changes hands, it becomes the money of the new possessor, and the one who had it now has no claim on it whatsoever.

Government has the right of *eminent domain* over the property of the citizens, insofar as that property is necessary for some public function. This does not mean that government "really owns" the property and it is loaned out to the citizens, or that government has a kind of lien on it, which allows it to foreclose when it needs the land for a road, say; citizens really own the property which they own, and not at the sufferance of government.

What eminent domain means is that, as a cooperative act, citizens can be *forced to sell* their property at a fair price to government if government needs the property for some necessary public function. Obviously, this right should be exercised as little as possible; evicting people from their homes is not to be done lightly, even if you pay them handsomely for it. Only the Double Effect allows this sort of act.

Government also has the right to *regulate marriages*, even though the marriage is in itself a private covenant between the parties; and the reason for this is that knowing who is married to whom and who is therefore responsible for whom (including children resulting from the union) is essential for government to be able to fulfill its function of seeing to it that no citizens are dehumanized.

In connection with the family, government has the right to *protect* children from their parents if the parents are doing them damage (or are not protecting them from their brothers and sisters). It can take children away from parents and care for them in other ways, if the Double Effect indicates that greater damage to them would be incurred if they were left with their parents.

In general, government has the right to set regulations for social order, such as determining on what side of the street to drive, what

is the maximum speed for driving (considering the state of the roads, not the gasoline supply), where cars can be parked, what minimum standards of safety for buildings and products must be adhered to, and so on.

These regulations, however, must be kept to a minimum, leaving the citizens free to do what they please as long as no real harm is going to come to anyone else. This should be kept in mind; once the regulating craze hits government, there tends to be no stopping it; and the attempt to avoid all possible abuses is perhaps the greatest abuse of all.

Obviously, government has all the rights that any authority in any society has, as I enumerated in earlier chapters of this section.

Just as with society in general, I spelled out the functions of authority and its rights, and then went on to the duties and rights of the member, so here, there are several duties the member has to civil society.

The first duty is to *love and respect his country*. This is all the more imperative for the very reason that the country was not, in general, freely joined; and yet one must obey government. But it is much harder to obey an authority which you have not given free consent to than to obey one that you freely submitted yourself to; and hence there is all that much more reason for taking the opposite tack and not creating obstacles in the way of obedience by despising the nation or its government. Criticism of government's actions is one thing; contempt for them is quite another, insofar as it implies contempt for the nation itself, to which you owe your existence. It is not for nothing that the ancients (and some moderns too) call the nation a "second mother."

Now this does not mean that the chauvinistic sense of "My country right or wrong" is in order. Insofar as this means closing one's eyes to injustices the government is perpetrating, it is even

morally wrong. But there is a sense in which it is justified and even necessary. Right or wrong, my country is my country and deserves my respect, just as my mother deserves my respect even if she is an alcoholic; and my country has a right to my service unless what she is asking me to do is something morally wrong.

If the country is a blatant tyranny, and there is hope of success from a revolution (and hope that the revolution will result in a less oppressive regime), then a citizen may even have the obligation to revolt against his country and destroy its form of government. Obviously, this must be a very last resort, and can only be tried when all legal means of correcting the injustices have failed, and the injustices are blatant, serious, and widespread. Otherwise, a citizen is obliged, using the Double Effect, to obey the laws, even if they are to some extent unjust.

As to citizens' rights, they have all their human rights, even the relatively inalienable ones. The reason is that they did not freely join civil society, and so government may not make as a condition for being in the society the cession of any of a person's human rights. Obviously, since its function is to *protect* the citizens' rights, it would contradict this if it demanded that they give any of them up. Thus, for instance, demanding that people give up the right to their property is morally wrong. In certain special cases, using the Double Effect, government may use a kind of "eminent domain" over all the property in the society-if, for instance, this is the only way to correct its being used for the blatant exploitation of large numbers of citizens-and even institute a communistic society for a short time. But this must only be a stopgap toward a situation in which private ownership is reinstated, allowing unequal distribution once again, as long as it does not result in the dehumanization of some of the citizens.

That, at least, is possible in theory. The problem is that every time

it has been tried in practice, the last state has been worse than the first; because once government gets its hands on the property and begins "giving" it to the people, the misplaced benevolence I spoke of earlier takes over, and the result is distribution of misery more or less equally to everyone but those in government.

Within a society, a citizen has the right of self-determination and its implied rights: the right to associate with others of his choosing, the right to privacy, and the right to choose his own work and his own style of life, as long as none of these involve the violation of anyone else's rights.<sup>83</sup>

A citizen has the right to be supported by government if he cannot support himself and has no one responsible for his support (such as parents)—or if they will not discharge their duty. As I said, if he *can* support himself, he cannot claim support from government on the grounds that he finds the work available to him "beneath his dignity."

Depending on the constitution of the society, the citizen has all the civil rights granted to citizens, or to his status in the society. In some nations, for instance, every citizen has the right to vote for those in government; in other nations, only some do, and in some, none do (as, for instance, in hereditary monarchies). The ability to determine who is to be in government and how it is to function is *not* a human right; because if society is performing its function

<sup>&</sup>lt;sup>83</sup>Does this imply the right *not* to associate with types of people you don't like? Yes, as long as this does not deprive those in the group discriminated against of any of their rights. If, for example, discrimination against Blacks in housing is widespread, so that a Black person cannot in practice live in the kind of housing he would be able to live in if he did not have that color, then people can be forced to open up their neighborhoods to such people. If not, then if the Black person cannot live next to Jones because of his prejudice, he can live somewhere comparable, and he is not in fact harmed (however justly insulted he might be).

## Part Six: Modes of Interaction

properly, it is leaving the citizen alone to live his own life as he pleases insofar as this does not interfere with anyone else's life; and this is all any human being can ask. The only time any damage would be done in citizens' not having a say in government is if government is exceeding its authority or shirking its legitimate function. It is perhaps *practical* for citizens to have a say in government because it is so easy for government to fail in these two areas; but if it is not failing, then the fact that it is autocratic is not really a sin. Autocracy does not automatically mean tyranny; and in fact, given the spirit of the people, some civil societies can only function as autocracies.

As a final remark about civil society, let me just say that the reason civil society is popularly supposed to "bestow freedom" on its citizens is that its job is to *allow* citizens to be as free as possible consistent with not dehumanizing anyone else, because human beings are basically persons, and so free. But of course, government actually *takes away* some freedom, because it demands cooperative action which *must* be done in order to ensure the greatest freedom for the greatest number. So there is a relation to freedom; but it is not a perfectly straightforward one.

4: Civil society

# 412

## Chapter 5

## The complex firm

t is now time to redeem the promise I made in Chapter 7 of Section 2 of this part and talk about the firm which has employees as part of it.

First of all, a few words about employees and employers in general, whether they are employees in a firm, or someone like a housekeeper or gardener a private person may hire.

An *employee* is a person who puts his service under the authority of someone else.

An *employer* is a person who hires another person to work under his authority.

Now that we have discussed authority, it will be a little easier to see what employees are doing. Let us take hiring a housekeeper as an example. The difference between hiring a housekeeper and engaging the services of a housekeeping firm (even if the firm consists of only one person) is that what you contract for in the case of the firm is the *results*, not the method that is going to be used. You may, of course, object to the way the person is doing the job; but in that case, you stop using her service and try a different firm. That is, as long as she gets the job done to your satisfaction, the fact that she vacuums first and then dusts is none of your business, even if you like people who

dust first and then vacuum. If she takes a lunch break from one to two o'clock, this is not something you have any say about, as long as the finished job is as you wanted it, and the fee is what you agreed on.

On the other hand, if you hire a housekeeper and you want her to dust first and then vacuum, then she is to do it that way; and if you want her to use a dust rag instead of a feather duster, she uses a dust rag, whether she thinks feather dusters are more efficient or not. What breaks from work she is to take, and when, are part of the employment agreement, over which you have control. And so on.

That, of course, is what is meant by being under authority. An employee is *willing to take orders* from his employer, just as a person who joins a society is willing to take orders from the authority in society. Of course, a private person's hiring an employee does not make the employer-employee pair a society, since there is no common goal that both are cooperating for; the relationship itself is essentially economic, even though the employee agrees to be under the employer's authority as far as what is to be done is concerned.

Note that not all employees are "workers," but people who perform any kind of service under authority. "Workers" primarily refers to employees engaged in some kind of production or physical service, though in an extended sense (such as "office workers") it also refers to those employees who are not involved in management, but simply perform the tasks assigned to them by management. But management consists of employees, because they too are under orders from the people above them; and even the president of a corporation is under the authority of the board of trustees and the stockholders.

The first conclusion that should be drawn about employers and employees is this:

Conclusion 31: The employer's authority over the employee extends only to what is related to the service he has hired the employee for.

The employer does not have a right, then, to dictate to the employee things connected with the employee's personal life, such as the way he dresses or how he wears his hair, unless this is somehow related to what he is doing. There can be a dress code in a firm, for instance, insofar as the employees are recognizable as members of the firm by outsiders, and the way they dress reflects on the firm itself (as it does, in fact). But once an employee is hired by a person, he cannot be told to change the way he dresses or shave off a beard he has grown just because the employer doesn't like it.

Some years ago, the Cincinnati Reds had a policy that their players would not wear beards. In most other teams at the time, players were wearing beards and doing just fine playing baseball, thank you; and fans didn't seem to find watching a bearded player on television any more disgusting than observing him spitting tobacco juice. There were no grounds for saying that wearing a beard had any effect on either performance on the field or fan attendance and adulation of the players; and so the restriction against beards exceeded the authority of management.

One who hires an employee *does not own that employee*. A human being is not something which can be purchased; that is slavery, not service. When you hire an employee, you are hiring a human being to perform a service for you in the way in which you want the service performed; you are not hiring a automaton which has no will or life of its own even while it is serving you.

The time the employer has control over irrelevant aspects of the employee's life is at the time of hiring. There is nothing wrong with hiring a less qualified employee over a more qualified one because

you "like the cut of his jib," as they used to say. After all, he is going to be working for you and taking orders from you; and it is better to have someone working for you that you like than someone who can do the job but who is disagreeable to you.

This right to hire whomever you please, however, does not allow you to violate anyone's *right* by your hiring practices. No person, of course, has a right to work for any other given person; nor does a person even have a *right* to work at the type of job that he finds most fulfilling. But as I said in Chapter 5 of Section 2 of this Part in discussing refusing services to others, if the person in question is a member of a group which as a whole is the victim of a conspiracy to deprive them of certain kinds of work, then you become part of the conspiracy if you don't hire him, supposing him to be qualified to do the job—and this is morally wrong, until the job market opens up enough so that this kind of person is not in effect being excluded from this kind of employment.

And for this reason, *affirmative action* is morally justifiable, and can even be forced by government if invidious discrimination prevents qualified members of a group from being employed in jobs that they are in fact capable of performing. Note that affirmative action does not in fact deprive those not hired of their rights, because they can get comparable jobs elsewhere. It is discrimination against those in the majority group, but unless it deprives *them* of finding comparable employment, it is not immoral. But mandated affirmative action must cease as soon as there is in fact reasonable opportunity (it doesn't have to be "equal") to find employment in that field; otherwise, less well qualified people (even if they are technically "qualified" would have to be hired over those more qualified, for no

reason of justice.84

I might point out a different kind of "quota" that could be used to find out if affirmative action can be mandated: it would be the number of qualified people in general looking for work in that field as opposed to the number of qualified people *in the group in question* looking for work in the field. It is simply silly to say that Black philosophy professors must tend toward reflecting the percentage of Blacks in the population, if only a hundredth as many Blacks as Whites have degrees in philosophy or any desire to teach philosophy. If four-fifths of the Whites who want jobs as philosophy professors can find jobs, then around four-fifths of the Blacks who want to teach philosophy should be able to find jobs also, even if this means that for every Black hired, there are ninety Whites.

You might object, "But the fact that for every Black looking to teach philosophy there are a hundred Whites itself shows discrimination: that Blacks are kept out of graduate schools." My answer to this is that you can't say this *a priori*, and you can find out whether it's true by looking at how many Blacks as opposed to Whites major in philosophy at the undergraduate level or how many apply to graduate schools in philosophy. If the number of applicants is still one to a hundred, then either (a) the exclusion occurred at a still earlier level (but where would that be in this case?), and the problem of invidious discrimination is to be addressed there, not later; or (b) Blacks just aren't as interested in pursuing philosophy as a career as Whites are. There's no reason they would have to be. Blacks, after all, do have cultural differences from Whites, and there is no reason why they would have to be pressured into becoming what they call

<sup>&</sup>lt;sup>84</sup>The fact that earlier generations were treated unjustly does not, of course, justify treating the present generation unjustly "to get even." Two evils never add up to a good.

"Oreos": Black skin but a White person underneath.

But to return to the point, since work is a necessity for most employees, this can be said:

Conclusion 32: Once a person hires an employee, he has a certain commitment to him, and cannot fire him frivolously. This commitment grows stronger the longer the employee works for the employer, and hence the more serious must be the reasons for firing him.

The reason for this is that the longer the person works for a given employer, the more accustomed he becomes to doing things the employer's way, and the less adaptable he becomes to doing things another way. Hence, the longer he works for one employer the less desirable he is as an employee somewhere else, which means that if he is fired, he is going to find it harder to find another job. But this in turn means that he is more likely to be dehumanized if fired the longer he works for the same employer.

Since this is so, and since the employer is hiring a human being to work for him, it means that, if the employer is not satisfied with the way he is doing things, the time to get rid of him is early on, not after he has been working for years. Furthermore, the longer the employee works, the more useful he could be expected to be to the employer, who no longer has to spell out in detail everything he wants him to do. But the real point is that to let someone go "because we found somebody else more qualified" is often to create a human tragedy for the sake of the pursuit of your own goals, and is as morally wrong as what doctors do when they charge exorbitant prices for their services. In both cases, the fact that "everyone does it" simply means that people in positions of power don't realize that exercises of raw economic power over other human beings are

tantamount to the exercise of power by threat of maining. In fact, however, it is morally wrong to advance yourself toward your goals by doing something that brings harm on other people.

That is, of course, a restriction on the employer. But in exchange for it, he has a service performed in the way in which he wants it performed. It is a small price to pay for this, it seems to me, to recognize the humanity of the person you hired to work for you; and if he's not perfection, but you've put up with him this long, why are you telling him to go fend for himself now? Of course, there are reasons for firing a person; what I am saying is that the longer he works for you, the more serious the reasons have to be.

Now then, once the employee is hired, of course, he is under orders; and that means the following:

Conclusion 33: The employer has the right to impose sanctions on the employee for not following orders. Like all sanctions, these must be the *minimum* necessary to ensure obedience "practically all" of the time.

Very often, the expression of the employer's displeasure is enough. But there are things like demotions and docking of pay which can also be used as threats; and of course, the ultimate threat is firing.

Since the employee is an employee, generally speaking, because he doesn't have the mental or emotional capability to be a successful entrepreneur, then employment is a necessity for him; and it can be a question even of staying employed or dying of starvation. In any case, losing his job is extremely hard on an employee, and so the threat of firing can be a very severe sanction indeed.

Because the employee is under the authority of the employer, then what we said in the preceding section in Chapters 5 and 6 about

responsibility with respect to the authority and the one under authority applies:

The employer is the one responsible for what is done and the way it is done, and the employee, insofar as he is following orders (supposing them not to be morally wrong) is not responsible for what is done or how it is done. Employees become responsible for what they do if they (a) obey orders to do something morally wrong, or (b) disobey orders (whether they were immoral commands or not). They are also responsible for what is done if they have information relevant to their orders and they do not tell the employer so that he can take it into account.

Employees, of course, *must* disobey any orders to do what is morally wrong, even if they will be fired for disobeying. In general, they must disobey orders that are unjust (that violate their rights or that exceed the employer's authority), except when, using the Double Effect, the effect of disobedience (such as demotion or firing) would be worse than the injustice they are suffering by obeying. This is all a straightforward application of what was said in the preceding section.

If an employee is going to disobey an unjust order, by the way, he has an obligation to *inform* the employer that he is not going to obey and why; if he simply doesn't carry out the order without letting anyone know of this, then he is being unjust to the employer, who (a) may not be aware of the injustice of what he is commanding, and (b) has a right to expect that his employees will do what he tells them. It obviously contradicts the employer as a person who gives you orders if he tells you to do something and then has no idea whether you will do it or not.

Employers may *request favors* of employees over and above what they were hired for; but it must be very clear that these are favors and that gratitude (and possibly more tangible rewards) follow, not that

### Section 3: Society

refusal is going to mean suffering the penalties of disfavor. This is a very delicate area, however, since for the employee work is a necessity, and so he might very well be using the Double Effect and doing something that he would much rather not be doing in order not to lose his job or incur the covert wrath of his boss by refusing. It is very easy for employers, who have enormous power over their employees, to think that employees are eager to do things for them and that they like them and all that sort of thing; and therefore to exploit this superficial readiness as if it were based on affection rather than apprehension of losing the job.

Conclusion 34: Employers should ask favors of their employees only extremely rarely, and then only in circumstances where it is perfectly obvious that a refusal will not make them suffer in any way.

A word on expert employees. If an employer hires an expert to work for him, he has less control over how the employee does his job than if he hires just a worker. The reason, of course, is that the employee knows more about what he is doing than the employer *and he is hired precisely for this reason*. Hence, it contradicts what the employer hired him for in the first place if the employer is going to meddle in things he knows less about than the person he hired.

It is also unjust for the employer to meddle, because the expert employee is the one who will be held responsible for a botched job rather than the non-expert employer; and this puts the employee in an equivocal position. Theoretically, he would not be responsible for the mess if he were told to do it; but in practice, since he is the expert, he is responsible for it. Hence, he must be left to do his job as his expertise dictates, more or less as if he were an entrepreneur, where results rather than method are what the buyer has control

over. The employer, however, still has control over details of the job that do not fall under the expertise of the employee, such as hours of work, place of work and working conditions, and so on.

But since the employee is a human being, it follows that

# Conclusion 35: Working conditions and the general atmosphere of the work must be such as to be consistent with human dignity, as far as the nature of the work allows this.

The employee is not simply earning money by his work; he is spending some of his life working under the authority of the employer. But he is a self-determining human being, not a slave, and while he is working he is not owned, but serving the employer; and hence he must be treated as a human being who is freely offering his services to the employer. The employer, that is, cannot expect servility simply because he is paying someone to work for him.

There are some jobs, such as garbage collecting or mining, in which working conditions are never going to be pleasant, or even free of danger. These jobs, because of the unpleasantness connected with them, should be compensated more highly than jobs which in themselves are rewarding and humanly fulfilling. No one, of course, may be ordered to perform a dangerous task against his better judgment; it must be very clear to him that he is *freely* choosing to do it, and is not going to suffer if he refuses. Hence, if he is to work among toxic chemicals, he must be informed of the danger, so that he can make up his mind whether he wants to take the risk.

Obviously, government can set minimum standards relating to hazardous working conditions and in general for humane working conditions. But these must be *minimum* standards, and must leave employers and employees free to work things out for themselves based on the actual situation. The object is not to save employees

from all dangers or unpleasantness, but to prevent the dehumanization consequent upon an employee's having to choose to work at a job that is dangerous or unpleasant because otherwise he starves. As I said earlier, once government gets into the regulating business, it will, if it is not very careful, overregulate, forcing all sorts of unnecessary "good" acts upon employers and employees alike, and in some cases, making things worse by its ham-handed attempt to make everything perfect. In general, regulations should only be imposed *after there have been significant cases of dehumanization*. People in general have good will; and it is invidious to assume that, since employers *can* exploit employees, they will do it unless Big Brother is breathing down their backs.

Sometimes, government regulation forces employers into dangerous practices. There has been discussion over whether women can be excluded from jobs that involve danger to their fetuses if they become pregnant. The feminist objection that "this is the woman's decision" is not valid here, because another person is at least potentially involved, and a woman may be pregnant for a matter of weeks without knowing it (and this early time is usually very critical for the fetus). Employers, recognizing this, may say that they will not hire women for these jobs, because they (the employers) are responsible for what is done by the employees under their orders, and so they are in fact responsible for any harm which would come to a person because his mother either didn't care about her child and exposed him to lead poisoning or radiation in order to get the higher salary, or did not think she was pregnant. The deformed child then not only has a claim against his mother, but against his mother's employer; and since this is so, to force the employer to do something that he could avoid is to dehumanize him in the name of "equal opportunity." This shows what can happen when the regulating fever takes over government.

Now then, when an *entrepreneur* hires employees to work for him, several special things occur. The entrepreneur is not really, in a sense, hiring people to work for *him*, since as an entrepreneur he is offering the services of the firm to the public. Thus, he is hiring people to work for the *firm* rather than himself.

This makes a difference, because the firm as such has purposes that are independent of the choice of the entrepreneur, as we saw in Chapter 7 of Section 2 of this part. Since the firm is performing a service to the consumer, this is one of its purposes, whether or not the entrepreneur regards it as a purpose, or only sees it as a means to an end.

Similarly, when the entrepreneur hires people to work for the firm, they are cooperating for the purposes of the firm, not the purpose of the entrepreneur. For instance, if he wants to put out defective merchandise because he can make a bigger profit this way, this is inconsistent with the firm's coordinate purpose of providing a service to the consumer, and the employee would have to refuse to cooperate in what is going on.

Hence, we can say this:

Conclusion 36: As soon as an entrepreneur hires people to work for him, the firm becomes a *society* with three coordinate goals: (a) to provide a service to the consumer, (b) to provide profit for the entrepreneur, and (c) to provide the benefits of employment to the employees.

I said in Chapter 7 of Section 2 of this part that the entrepreneur does not own his firm, because you can't own a service. It is even more true, as I also have said in several places, that you can't own the people who work for you. The fact that the entrepreneur *created* the business doesn't mean that he can do whatever he wants with it,

because it necessarily involves him in relations with other people, and other people have rights. Hence, he is not the owner, but the one in authority in this new society which has been created; and this means he has a definite role *and is engaged in cooperative activity* for the sake of the service he is performing.

But why does the firm suddenly acquire as part of its common goal providing the benefits of employment to the employees? The reason is twofold. First, people achieve the ability to pursue their goals by serving others; and so those who don't have entrepreneurial skills need to work for someone else in order to be able to pursue their goals. This means that most people need jobs in firms in order to survive. Secondly, entrepreneurs obviously need employees; they wouldn't be hiring other people to help them perform their service if they could do it all by themselves.

Since, then, the entrepreneurs need to hire people to work for them, then they become of necessity that segment of the population which is providing employment opportunities for the segment of the population for which this is a necessity. Hence, the complex firm has employment as one of the things that makes it what it is; and so providing humane employment is one of its coordinate goals. To put it another way, the complex firm is performing *two* services: the obvious one to the consumer, and the less obvious one to the members themselves; and this second service splits into two: the service of providing work and profit for the entrepreneur, and the service of providing employment for the people in society who need it.

Since providing employment is one of the coordinate goals for the firm as such, it follows that

Conclusion 37: Entrepreneurs must not be solely concerned with maximizing profit when considering hiring employees and

## providing working conditions for them.

That is, it is quite reasonable for an entrepreneur who is making a profit that is greater than his standard of living to hire employees even beyond the point where the law of diminishing returns sets in. That is, if the amount that has to be paid dealing with this last employee (including not just wages but the cost of providing working conditions and the extra work connected with figuring out his taxes and so on) is greater than the revenue increase of the firm because he is now in it, then obviously hiring him is a net loss for the firm, *financially speaking*.

Nevertheless, this means that one more employee now has the opportunity to work and pursue his human goals through service to others, and providing this opportunity is a valuable public service.<sup>85</sup> It is perfectly legitimate for the entrepreneur to take this into account as one of the functions of his firm, and if his profit is sufficient to meet his standard of living with this extra employee, why shouldn't he hire him? It is only if you look on things solely in terms of money that hiring employees beyond the point of diminishing returns makes no sense. Business is *not* in business just to make as much money as possible for the entrepreneur; and entrepreneurs who are not interested in making more than a decent living are being perfectly rational if they plow extra profits back into the firm with the idea of making the service better and giving decent employment, wages, and working conditions to as many people as possible.

<sup>&</sup>lt;sup>85</sup>It also follows, of course, that the volume of what is offered to the public increases, even though not at a rate which implies a profit to the entrepreneur; and thus the first goal of the firm, providing a service to the consumer, is also enhanced. It is only when profit is regarded as *the* goal, such that service and employment may suffer to achieve it, that it is "silly" to hire a worker beyond the point of diminishing returns.

### Section 3: Society

That is, the economics of capitalism is only the "dismal science" if you take a one-sided view of it. *In practice*, there are many, many entrepreneurs (especially entrepreneurs of small firms) who are not interested in becoming as rich as possible, but who just want to serve the public well; and it is time to stop trying to write "realistic" economics textbooks that assume that everyone is infinitely greedy, and that it is "idealistic nonsense" to say that firms can rationally do things that don't tend toward the greatest possible return upon investment.

With respect to employment, this service of providing employment for people in general falls upon firms and private individuals. Government is to be the employer only of last resort.

The reason for this is that, first of all, in order to provide employment, government must use taxes to pay the employees, and the taxes are taken from other citizens, who do not, of course, want the service. The second reason is that employment purely for the sake of giving jobs to the employees means that the employees are not really performing a service, but are beneficiaries of the salary, for which they have to do something not needed or wanted by anyone. There are, of course, tasks that the government must perform, which require employees to perform them; and there is no problem with its hiring people for this purpose. But government's providing jobs for the sake of keeping citizens employed is so close to being self-contradictory that it is to be used only when the Double Effect would demand it.

Government's role with respect to employment, then, is to make it clear to the private sector that firms have an obligation to provide employment to the citizens, and to avoid getting in the way of the private sector's providing employment by creating conditions unfavorable to employment. Our government, for instance, raised the capital gains tax a while back, because the largest number of

people who were clamoring about the fact that the deficit had to be cut wanted to "soak the rich." But of course, higher taxes on capital gains discourages investment in things that produce capital gains like plant expansions, modernization, and so forth, which generate jobs. Having done this, the same people will then be pushing for government-generated jobs programs. It is this sort of government meddling that must be kept to an absolute minimum.

If we look now at the employee's role in this society which is the firm, we can say two things:

Conclusion 38: The employee in a complex firm is serving two people: the entrepreneur who has hired him, and in cooperation with the entrepreneur, the consumer whom the firm is serving.

That is, the employee's duty is not *solely* to the entrepreneur; but since he is a member of a society one of whose common goals is the service of the consumer, he is also serving the consumer. Hence, any orders that the entrepreneur gives that are positively detrimental to the consumer are unjust and must be disobeyed, or the employee also, as I said, becomes responsible for the harm done to the consumer.

But a single employee is often in a very poor position to protest bad business practices on the part of the firm that hired him; and so it is legitimate for him to band together with other employees to be able to exert counter-pressure on the entrepreneur to make sure that the firm acts consistently with all three of its goals.

Conclusion 39: Unions of employees are legitimate, and must not be hindered. But they are to be used not only to protect the employees from injustices to them, but to pressure employers to

### see to it that all the goals of the firm are advanced.

Historically, unions have been very useful in reversing the tendency of entrepreneurs to perpetrate injustices upon employees; but in recent years, it has looked increasingly as if unions have put so much pressure on the firm that its service to the consumer, and sometimes even a decent profit for the entrepreneur is lost sight of, and the firm is forced out of business by the unreasonable demands of the employees. Shoddy service because of the impossibility of imposing sanctions on employees and high prices because of demands for exorbitant wages have perhaps improved the workers' lot; but it is now being done at the expense of the consumer; and the firm is in business to serve the consumer, not to gouge him. Unions which have the good of the firm and not simply their own gain in view can perform a very beneficial service to the firm, the consumer, and the society in general; but since, having power, they can abuse it (and are, in some cases, blatantly abusing it, with as much abandon as the capitalists of the last century), then government must step in with legislation designed to curb abuses, but even more with education trying to get across what unions' proper task is-and for that matter, what firms' proper tasks are in society.

As to the entrepreneur in a complex firm, he is serving it in two senses: (a) by investing his money in it when he could be doing something to further his own goals with the money, and (b) by taking upon himself the authority of the firm, and thus becoming responsible not only for what he does but for what the employees do also.

I mentioned in Chapter 5 of Section 2 of this Part that compensation was due for a *service*, not necessarily just for work. Any time a person foregoes his own goal-seeking and does something that benefits others rather than himself, he deserves compensation. The

entrepreneur, then, *is* performing a service, and a service to the *firm* (through which he indirectly serves the consumer). This service of providing money and taking responsibility is not only very valuable, but necessary for the firm's very existence; and hence the entrepreneur deserves compensation for what he is doing for it.

And of course, the compensation I am speaking of is the profit of the firm. Since the entrepreneur is responsible for there being a firm in the first place, then there is no reason why, once the firm has performed its service and received (as a firm) its payment for the service, and the entrepreneur has covered his costs and paid the employees a decent wage (i.e. one that enables them to pursue their own goals meaningfully), he cannot take what is left over as his profit, even if the amount is enormous. He is not doing anyone any harm by this, and has no reason to feel guilty at becoming fabulously wealthy by being the entrepreneur in the firm, any more than he should feel guilty if he were the sole person in the firm and people were paying him enormous sums for his service.

But he *has a right* to a decent profit insofar as he is performing the service of investing his money and being the authority of the firm as a society. He doesn't deserve the profit because he is "risking" his money, as if the danger of losing all of it were the service he was performing. Insofar as the danger of losing it is great, then he might deserve a higher profit than otherwise, just as an employee has a right to ask for a higher salary if he is going to perform a dangerous job. But even if the investment is as safe as putting his money into a bank (which as I originally wrote this didn't seem to be all that safe either), he still deserves a profit, because this money is benefiting not only the public but his employees, who can serve without having the burdens of responsibility for the service on their shoulders.

Note that it is often a value for a person to serve the public through being an employee in a firm rather than serving them

directly as an entrepreneur; and this means that he is willing to give up some of the compensation he would probably otherwise receive in order to have the luxury of not being responsible directly to the consumer and of having a steady salary.

I mentioned earlier the contractor who had done some remodeling for us. He had a worker under him for whom he was charging me \$17.50 per hour in wages (the same as he was charging me for his own services per hour); but he was paying the worker only \$10.00 per hour of the "wages" I was ostensibly paying for the worker's work. The difference *looks* as if he was siphoning off \$7.50 per hour from what the worker was earning; but out of that, he had to take care of insurance and other costs that the worker didn't have to worry about, and in addition he had to plan what the worker was to do and so forth, while the worker had no concerns except to pick up the hammer and saw and do what he was told and then go home and night and forget the whole thing. I talked to him one time and he said, "I know what he's charging you for my work; but I don't care. To me it's worth it not to have to go through the hassle." Hence, the entrepreneur *is* performing a service to the employees.

But since the entrepreneur's service is *necessary*, then he is of course in a position of power, just like the provider of any necessary service. And since he is also the one in authority in the firm, then he is the one who sees to it how much each person in the firm is to be paid. This clearly allows for the possibility of abuse, "paying himself" such enormous compensation for his invaluable service that the employees and the service to the consumer suffer.

Hence, we can say this:

Conclusion 40: Entrepreneurs must take great care that, since their service to the firm is a necessity for it, that they do not take advantage of the employees or the consumer by their exorbitant

## demands.

They are not quite in the position of doctors, however, unless the firm itself is performing a necessary service to the consumer. Doctors, as I said, had to base the price they asked for their service on what would allow them to make a decent living but no more, because they were in effect holding the consumer under a threat. But if the firm in question is performing a non-necessary service, then, even if the entrepreneur is holding the firm itself under a threat of dissolution if he withdraws his money, still, the employees *can* find jobs elsewhere, and do not need to work in *this* firm in order to survive.

Furthermore, if the entrepreneur is paying them decent wages, they are not being *damaged* if he takes a million dollars a year from the firm in profit; and so his demanding of this from the firm does not mean that the employees have to "pay" it or be harmed. They will be less well off, perhaps, than they would be if he took half of the profit and used it to raise their salaries; but they don't *need* the raise in order to live a human life, in the sense that the patient needs the doctor's service in order to live a human life. So there is nothing wrong in the entrepreneur's becoming very rich from his business, as long as it is performing good service to the consumer at a reasonable price and that it is paying good wages and providing good working conditions for its employees.

All this supposes, as I said, that the firm is not providing a necessity to the consumer. If it is, then what I said about the doctor applies to the firm and to everyone in it, especially the entrepreneur. If the product is a necessity, then the consumer has a right to have it free, except for the fact that others are serving him in providing it, and *they* have a right to compensation for their service. But this means that the providers (each and all of them in the firm) have a right to a *decent* living from their collective service, but to no more

5: The complex firm

## 432

### Section 3: Society

than this. Hence, the entrepreneur in, say, a pharmaceutical company *has no right to more than enough profit to live reasonably decently*, and must *cut prices* if his firm is making more of a return than enough to cover costs, pay decent wages, have decent working conditions, plus this decent profit.

This again is a moral issue, and until it is recognized as such, I don't see much hope that legislation can alter the abuse of economic necessities that is going on today. Once it is recognized for what it is, though, legislation can probably curb abuses, because the people will be basically willing to do the right thing, and can exert enough pressure on each other that the greedy ones will stand out and can be dealt with.

There are legal technicalities that I don't want to go into connected with firms that have more than one entrepreneur. If the firm is a partnership, then the partners are jointly responsible for what the firm does; and so if one partner absconds, the other is held fully responsible. To avoid this sort of thing, the *corporation* was devised, where each entrepreneur can be held liable only to the extent of the amount of money he invested in the firm, and his private assets are then exempt from seizure to pay off the firm's bills.

But I do want to say a word or two about a structural difference that emerges when the corporation has a relatively large number of investors. In that case, it becomes impractical for the entrepreneurs to take authority for the actual running of the firm; and so for practical purposes their *sole* service to the firm is that of investing money in it. It follows from that, of course, that the return on their investment would tend to be less than the return to the entrepreneur who also directs the operations of the firm.

Very often, of course, in our stock markets, investors "invest," not really to serve the firm, but because it is a kind of lottery or game, where not even the dividends of the stock (the share of the profits)

### Part Six: Modes of Interaction

make much difference, but the increase and decrease of the selling-price of the stock is all that is of interest. In theory, this price should reflect the profitability of the firm, its soundness, and so on; but in practice, it is often pure mob psychology which determines the way a stock's selling-price will go. Speculators in the stock market are not really capitalists (and most stock trading is speculation to one degree or another), but simply gamblers, though the game happens to benefit to some extent the businesses they are shuffling round on the Big Board, because at least the initial stock issue raised money for the company. But beyond that, the company does not really see any return for the fluctuations in the price of its stock in the market.

But that aside, when the number of stockholders is large, then the firm has to be managed by an employee or employees who take over the authority in running the firm. These employees, of course, are top management: the board of trustees (who are usually some of the stockholders) and the president. What I want to say here is that

Conclusion 41: The function of the policy-setting level of management is to see to it that *all three* of the goals of the firm are recognized and promoted, and that the firm is not run simply as a machine for making profit for the investors.

Since large firms are so impersonal, it is frighteningly easy to turn them into bureaucratic machines that do nothing but grind out money for the investors, caring nothing at all about decency towards the employees or a good service to the consumer, except insofar as this makes greater or lesser profits. This, though it is what is taught in economics textbooks, is wrong and inconsistent with the nature of a firm; and it must be stopped.

Managers also, since they hold authority in the firm and also are necessary to its existence, should not have so exalted an idea of the

### Section 3: Society

"value" of their service that they charge outlandish fees for their service. Once again, they get what they ask for, not because they are so valuable, but because they are necessary; and insofar as they help decide their salary, they have a double opportunity to exploit others so that they can have more money than any rational human being would know what to do with.

But that is about all I am going to say about the complex firm. Let me simply finish up this section by stating that government can affect the economy of the country in various ways: by spending money, borrowing money, exacting taxes, allowing inflation, and regulating things like interest rates. It is exceedingly tempting to use government's vast economic power to tinker with the country's economy and try to manage it.

But (a) this is an almost certain recipe for disaster, because the economy of a whole country is so complex that, Keynes notwithstanding, no one has much of a clue to what is going to happen by this or that government intervention. A great deal of what the economy of the country as a whole does is mob psychology, and the thing that brought prosperity yesterday can bring disaster today as that most irrational of all animals the public is swayed one way or another. Also (b), even if it could be done, it shouldn't be, because of the Principle of Subsidiarity.

True, some tinkering with the economy is probably necessary, because what government does in performing its tasks has an effect on the economy of the country, and it has to correct for adverse consequences of what it is doing; and also, when there are things going on in the private sector that cause inflation or deflation and affect the value of money, government must correct this and keep the money stable as far as possible. But this sort of thing should be kept to an absolute minimum. Government's task is not "producing prosperity," but preventing violations of rights and dehumanization.

## Part Six: Modes of Interaction

So let me end this treatment of society and the part of the book that is analysis of the way things are as I see them by issuing the cry to government that all citizens of every country, it seems, must always issue to government. In the words of Moses,

Let my people go!