Philosophica 23, 1979 (1), pp. 51–77.

CONTRACTS, NECESSITY AND JUSTICE

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Introduction

It is a generally accepted principle that contracts made under coercion do not morally, and should not legally, oblige the coerced party. There is much less agreement on the answer to the question whether contracts made in necessity oblige the necessitous party. Contracts made in necessity raise some challenging questions pertaining to the border-region between law and morality, where they appear to provide a goodly number of occasions for far-reaching political disputes. One example : some, though by no means all, socialists maintain that capitalist wealth is in practice impossible without unfair contracts made under necessity : if such contracts are really basic requirements for the accumulation of capitalist wealth, and if they do not morally oblige the necessitous party, the worker, then the legal enforcement of such contracts is itself immoral, and the distribution of wealth brought about by the actual or threatened enforcement of such contracts is unjust. The political relevance of the question of the validity of contracts in necessity seems obvious.

Coercion is a much less controversial issue : the cause that voids the contract is the action of one of the parties by which he deprives the other of all reasonable alternatives to doing what he wants him to do or forbear. To enforce such a contract is to assist another in carrying out his threat. Contracts made in necessity resemble contracts made under coercion in this respect : one party accepts "because he has no other choice"; but they differ with respect to the other party, who in one case is, and in the other is not to be blamed for the fact that the first has no choice but to accept whatever is proposed to him. To coerce somebody to do something which he is under no obligation to do is clearly morally impermissible; and few will disagree with the further statement that it would be equally

impermissible for other persons, especially the so-called "agents of the law", to assist in enforcing the claim of one who coerced another to accept the terms of a contract — even if the terms, considered in themselves, were "fair". Such a contract is both immoral and illegal. Cases of necessity, on the other hand, do not exhibit the same clear congruence of law (in the sense of *just law*) and morality.

A particularly dramatic illustration of this fact was recently reported in the press[1]. A man suffering from aplastic anemia, a rare but usually fatal disease, which can however be cured by a bone-marrow transplant, sued the only person known to be a suitable donor to "aid a dying man [through] a medically safe, experimentally proven, minor procedure which will at most result in minor and temporary discomfort" — but the "suitable donor", a relative of the diseased person, persistently refused. The judge, according to the press report, ruled that "this lack of compassion, while morally indefensible, was also perfectly legal", and added the comment that "to force the operation on an unwilling person 'would defeat the sanctity of the individual'". *Summum jus, summa injuria ?*

A person who uses force, or threatens to use force against an innocent man does something which is not only immoral, but also illegal. It would be morally permissible to use force to stop him, or to prevent him from carrying out his threat. Can it really be that someone who stands idly by the blood of his neighbour, and is guilty of what is perhaps the gravest offense against morality, should be shielded by the law ?

Looked at superficially, the judge's verdict in the case described seems to show that, if it is in accordance with just law, then morality and justice can conflict; and that, if they cannot conflict, the judge's conclusion must be wrong — i.e., what is morally indefensible should not be legal, what is morally permissible should not be illegal. But this view is false, though it is false for what may strike some as a rather paradoxical reason, viz. that it denies the universal validity inherent in our conception of morality, and builds on this denial to construe the relations of judges, other law-enforcement officials, and legislators, with respect to their fellow men, the citizens, as being of a fundamentally different nature as the relations among citizens. This view, which I claim to be false, lies at the heart of almost all of our political philosophy in the western tradition, and culminates in the assertion of the thesis that the political question, which laws to enforce, must be decided by checking whether any proposed law is either itself moral law, or at least not contrary to it.

We shall see that, even if the judge was right in finding the

defendant's conduct both morally indefensible and perfectly legal, it does not follow that justice and morality can conflict. In fact, I shall argue that the judge's decision was morally right, that it would not have been morally permissible for him to order the use of force upon the defendant — or, to put it differently, that judgments regarding the morality and the legality of particular actions, though they may deny the one and affirm the other, are grounded in a single consistent normative system of universal validity.

At first I shall not consider contracts, but shall confine my discussion to the law's attitude to cases of need such as the one I have chosen as the vehicle for my argument. The complexities introduced by the contractual bond will not receive attention until we have dealt with cases of need in which these complexities do not arise.

Necessity and morality

In his fascinating and rewarding philosophical reconstruction and evaluation of what he calls "the Hebrew-Christian tradition of morality", Professor Alan Donagan[2] derives the Principle of Beneficence *(PB)* as one of the major ingredients in our common morality[3]. According to this principle, it is morally impermissible not to promote the well-being of others by actions not in themselves morally impermissible, inasmuch as one can do so without disproportionate inconvenience to oneself or those one cares for. This principle, *PB*, illustrates the effect of what Donagan calls "the Pauline Principle", which asserts that it is morally impermissible to do evil that good may come of it, and hence that it is morally impermissible to promote the well-being of oneself or others by actions in themselves morally impermissible[4]. In other words, our common morality prescribes that we avoid doing evil at all costs, but at the same time try to do as much good as we can do without inflicting disproportionate inconvenience on ourselves and others. It does not prescribe that, if there are two ways of doing good, each of which involves the doing of an evil, we should nevertheless do good; nor that, in such a case, we should select the way of doing good which involves the least evil; and it certainly does not prescribe that we should merely weigh the good consequences against the evil ones, putting aside all moral qualms whenever the balance is in favour of the former. Common morality is not of the "consequential" variety. The consistency of common morality is forcefully defended by Donagan, and I have nothing to add and nothing to criticize at this stage of the argument, except that it is well to remember that

whereas two persons may very well judge differently, yet in good conscience, the disproportionateness of some inconvenience that is the concomitant, in some particular instance, of promoting the well-being of others, they ought to be able, from the standpoint of common morality, to agree on the nature of actions which are in themselves morally impermissible[5]. It is *not* morally impermissible not to promote the well-being of others, if one judges in good conscience that the burden on oneself or third persons would be too heavy.

If *PB* is related to the Pauline Principle, it is also related to what Donagan calls the Principle of Culture : that it is morally impermissible not to adopt some coherent plan or philosophy of life according to which, by morally permissible actions, one's mental and physical powers may be developed[6]. This principle stands in the same relation to the Pauline Principle as PB, but is in fact more demanding in that no "inconvenience" will ever excuse us from observing it. The reason is a logical one : what will count as "convenient" and what as "inconvenient" cannot be determined without reference to one's philosophy of life. As Donagan notes, both principles, of beneficence and of culture, ordain not specific actions, but the promoting of certain kinds of ends; as such they leave it largely to each human being to contrive how to observe them in the stream of his existence : "the plans [an individual] makes will to some extent determine what benevolent actions he can conveniently do."[7]

From these principles, we may take it, it follows unequivocally that the defendant's conduct in the case of the aplastic anemia patient was morally impermissible. The implications of *PB* are clear and damning for the diseased man's reluctant relative : he ought to have consented to the proposed operation — to undergo an operation of the kind required is neither morally impermissible nor the source of a disproportionate inconvenience for him or those he cares for. It is hard to think of him as maintaining his conscience is clear; and even harder to think of anyone as maintaining that the judge's decision established the man's moral innocence.

Law and morality

The crucial condition in the formulation of *PB* is that only actions not in themselves impermissible are allowed. As a principle of common morality, *PB* applies to all human beings. Hence the question arises : is it really morally impermissible to force another to save the life of a man afflicted by a possibly fatal disease ? Notice

that this is the question confronting the judge, not the unwilling relative. It is also the question confronting any other person (as well as the diseased person himself) who might be in a position to force the unwilling relative to submit to the request. Indeed, from a moral point of view, the judge is just another man : the existence of formally instituted courts of law is not very relevant, perhaps not relevant at all. In any case, if it is not morally impermissible to force someone against his will to save the life of a dying man, how could the judge, in justice, condemn one who resorts to force for that purpose ? Just law, I take it, cannot authorize the coercive suppression of *morally permissible actions* : our problem is whether it should always or at least in cases such as the one we are considering authorize the coercive suppression of *morally impermissible actions.*

What is involved in asking whether the unwilling relative's conduct is illegal ? My thesis is that, from the standpoint of just law, it is nothing but asking whether it is morally permissible to force him to undergo the bone-marrow operation. In other words, it is nothing but just another moral problem.

There may be a special morality for judges, but only in the sense that there may be a more demanding morality applicable to the agents of the law as such than the one that applies to them as human persons. Our common morality applies to all human beings qua rational creatures, regardless of their station in society : its demands on the judges are certainly not more lenient than the moral requirements for brick-layers or rentiers. There is also another way to clarify the point : the very universality, inherent in the concept of our common morality, ensures that it must apply to all types of society, even those that are ignorant of, or those that have renounced the institutions of government, legislation and perhaps the formal administration of justice. In such "anarchistic" societies there is no formal class of "agents of the law" : anybody who wants to be one can establish himself as a "judge" (whether or not he is accepted as such by his fellows); but even in such a society all but a very few are "third parties", on-lookers, members of the public, who cannot avoid being confronted with situations in which they should decide whether they are morally entitled to intervene, and if so, on whose side and by what means. There is nothing incoherent about the notion of a fully decentralised method of law-enforcement, not even in the absence of legislation.

Donagan rightly notes that our common morality contains a principle, which may be called the Principle of Force, according to which it is morally impermissible for anybody at will to use force

upon another, except in such measure as may be necessary to defend rational creatures from another's violence. There are situations in which the use of force is morally permissible. In my view, it is the primary object of any philosophy of law to derive *the specific principles governing the permissible uses of force against others.* I do not deny, of course, that the concept of law is much richer than this : there is certainly an urgent need for a genuine science of law, i.e. of the ways in which individuals inhabiting a common world solve their many co-ordination problems, and of the means and techniques they use for co-ordinating the solutions of two or more, perhaps many more of these problems, even to the point where it becomes possible to think of a consistent legal system, in which each particular solution or "rule of law" fits snugly into the whole , which then, perhaps, provides a sufficient reason for observing the parts. But no matter how snug the fit, this integration into a whole may not be sufficient to make it morally permissible to use force against non-conformists; no matter how convincingly the legislator argues for his brain-child, he is not thereby justifying the punishments, fines and other penalties with which he seeks to *enforce* it.

If I am right in saying that the basic philosophy of law is concerned not with particular legal institutions in the sense of the term commonly taken for granted — institutions which enable people to use publicly acknowledged means and procedures for attaining particular ends, without upsetting accepted parterns of coordination — but with social control through the morally permissible use of force, then it follows that there is no ground for denying to law the same universality, with regard to its "domain of personal validity", which inheres in our common morality. The rules of justice under the law — call them principles of natural law if you prefer that term — are but a fragment of the set of moral rules, more specifically the rules implied by the principle of force, or some similar rule.

In Donagan's reconstruction, common morality does not require the use of force, except when not using violence or force would constitute an offense against our fundamental moral law, that every human being is to be respected as a rational creature. The principle of force *permits*, it does not require. *The emergence of specialized "agencies of law-enforcement" is therefore compatible with common morality*, but is otherwise irrelevant to the basic question : just when and in what form is the use of force permissible ?

Assuming the moral impermissibility of the refusal by the reluctant relative to have the operation performed on him, I must now turn to the problem of its legality (understood with reference to just law, not some system of positive law). I have already argued

that, common morality being internally consistent[8], justice and morality cannot conflict. The judge's ruling, that the said refusal, though morally indefensible, is perfectly legal, merely means that it was morally impermissible *for the diseased man's relative* to refuse to agree to the operation, but that it would be equally impermissible *for him* (the judge) or any other person to force the man onto the operation table.

In another sense, however, the problem stands undiminished : even if we grant that the judge's verdict does not involve a conflict between justice and morality *on a conceptual plane*, does it follow that his ruling can be justified within common morality ? Are there no rules which permit or even require the use of force against the man in question ? We may here disregard the problem of conscience. If a person does what is morally impermissible because his conscience tells him it is what he ought to do, common morality will hold that he is inculpable — unless he has culpably allowed his conscience to err or to become or remain corrupted. What is done at the behest of a good conscience is done inculpably. It is unlikely, however, that a person would in good conscience refuse to help another to survive, if he could do so without great inconvenience to himself or others, unless his whole environment is such that it would have been a superhuman task to pierce its lies and hypocrisies, even for those who suspected its corruption and set out to unmask it. In any case, we have assumed from the beginning that it was morally impermissible *for the defendant* not to help his relative. Nothing we know of the case gives any plausibility to the claim that he was urged on by a good conscience not to save his cousin.

The fundamental principle

Is it possible to defend the thesis that if the judge had decided to use force against the defendant, he would have done merely what it is morally permissible for him to do, viz. defend a rational creature against another's violence ? This is not plausible, since violence is after all nothing but the morally impermissible use of force, of physical power against another — and no use of force, no direct interference by means of the exercise of physical power was involved. It seems, therefore, that the Principle of Force, does not constitute a sufficient ground for allowing the judge to decide otherwise than he in fact did. But perhaps the Principle of Force is merely an unduly restricted formulation of another moral principle or merely one among several such principles dealing with the permissible uses of force.

We should first understand why the Principle of Force is certainly a moral principle. The use of force upon another, against his will, when he is "innocent", is clearly inconsistent with respect for him as a rational creature, since it is tantamount to treating him as either incapable of conducting his own life, or as unworthy of doing so. Common morality, Donagan argues, is really nothing but the totality of what is implied by *the fundamental principle of respect for all human beings as rational creatures* : it is based on respect for man as a rational creature, not on respect for man as being morally exemplary or "above standard" — which would not be a basis at all. Whether a person chooses to lead an immoral life, or through culpable ignorance or a corrupted conscience lives such a life, he still ought to be respected qua rational creature. There is certainly no dearth of reasons for calling him an unrespectable person, but that is no excuse for others to conclude that in dealing with him *they* need not observe the demands of morality. Common morality does not, of course, require that we treat those we judge in good conscience to be respectable, and those we judge in good conscience not to be, those we judge to be less and those we judge to be more respectable, in the same manner.

The fundamental principle of common morality asserts that it is morally impermissible not to respect every human being, oneself or any other, as a rational creature. This principle, which I believe to be a necessary truth, in the sense that if there are rational creatures, they must be unable to deny its validity without denying their own nature as rational creatures[9] — this principle is, however, likely to mislead unless one appreciates its full generality and takes account of the two meanings of 'respect' which are basic to our morality. For although what we are to respect is rational nature as such, for each of us rational nature is embodied both in *oneself* and in *others*. To respect rational nature, as embodied in oneself is necessarily different from respecting it as embodied in others, even if it is logically impossible to separate these two modes of respect.

In one sense, 'to respect' means "to consider worthy of esteem", "to esteem", "to value highly"; in another sense, it means "to refrain from obtruding upon or interfering with". It would be absurd to construe common morality as asserting that it is morally impermissible not to respect the unrespectable — which would follow if we construed 'to respect' in the first sense. But it would equally be absurd to construe it as asserting that it is morally impermissible not to respect oneself as a rational creature, i.e., not to refrain from obtruding upon or interfering with oneself.

Common morality, ordaining respect for every human being as a

rational creature, permits us to guide and evaluate our own actions; it teaches us how to become respectable persons, worthy of our own and others' esteem. But it also teaches that we cannot succeed in this endeavour unless we refrain from obtruding upon or interfering with others — for to fail to refrain from this is not to respect another *as a rational creature*, i.e., as something which he is, regardless of what he does.

Man is a rational animal : he is both a rational creature and an animal creature. To respect oneself is to take care not to allow one's animal nature to rule one's life — which is not to say to suppress it, but to guide it and to keep it in its proper place, not to deny it, but to develop it and integrate it into the pattern of one's life, as demanded by the principle of culture. According to common morality, reason is neither the slave of the passions nor their substitute. If this is what respecting oneself as a rational creature amounts to, it follows from the fact that the prescriptions of our common morality are addressed to each and every individual human being (by virtue of his being a creature endowed with reason), that to respect another must mean to allow him to lead his own life, to take care not lead even part of his life for him — for good no more than for evil purposes.

All of life for a human agent is action, in that all of life consists in sacrificing some possibilities for the sake of realizing other possibilities — all of life consists in foregoing the enjoyment or "income" expected from certain uses of one's means or resources for the sake of striving after the enjoyment or "income" expected from some alternative use. Every course of action requires the consumption of resources, the using or using up of the capacities of one's means to yield services in the attempt to attain one's ends. In this sense, then, all of life is purposeful sacrifice. As a guide to action, morality is concerned with the question how these sacrifices should be made. It purports to enlighten every individual agent in allocating his resources. But it does not, and cannot, guide any human agent in allocating the resources of others — indeed, it would become unintelligible if it did.

One of the presuppositions of common morality is that the human agent is not a disembodied self, but an element in or part of a system of nature governed by morally neutral laws[10]. Only the embodied self has the capacity of rational agency, is a *human* agent. What a human agent can do depends on his abilities and means and opportunities, i.e. on his abilities to control things — say, to move his body or some particular parts of it in or according to some desired pattern, or to rearrange some elements in the environment in ways

which he expects to cause an event of some desired kind — and on the availability of the things to which his abilities pertain, as well as on the state of those things which are not under his control, but are relevant to his venture.

Having the means to do something is having all the things it takes to do it — to have a sufficient supply of some proper (though not necessarily unique) array of several kinds of things. Having the means is, of course, compatible with not wanting to do it, with having no reason, no motive to do it; and it does not mean that, if one sets out to do it, he will succeed in doing it properly — ability and opportunity may also be required. To deprive someone of the means to do something is to deprive him of the possibility to exercize his abilities on one or more of the things it takes to do it, either by destroying or impairing or immobilizing the thing or things, or by removing or keeping it out of his reach; to diminish someone's means to do something is to diminish the possibility of his exercizing his abilities on some of the things it takes to do it, by damaging them, reducing his supply of them, and so on.

To deprive someone of his ability to do something is to destroy or impair or immobilize or remove some part or parts of his body which is or which are necessary to do it. To diminish someone's ability is to damage or reduce the supply of those parts of his body which are necessary to do it. An ability is not, of course, a body-part, but no ability can be meaningfully conceived as not residing in the body or in particular parts or organs or functional sub-systems of the body. One's intellectual and physical and volitional abilities are not things in the world; they may increase and decrease, be trained or neglected, but they cannot be separated from the person, his body and its parts — neither in voluntary exchange, nor by force or coercion. A person can sell his services, but not his abilities, without enslaving himself. We see here that "to deprive someone of the ability to do something" implies "to deprive someone of the means to do it", but that the converse does not hold. However, this relationship is a bit too neat, since it does not take account of the complexities which may be introduced by the concept of opportunity.

Often what a person can do depends on the "cooperation" of the environment — on those things in the world, which are not under his control (that is, not sufficiently under his control for the purpose at hand), either because he lacks the means or because he lacks the abilities to control them, being and continuing to be in a certain state. If they are and continue to be in such a state, we may say that the person has an opportunity to do a particular kind of thing. To

deprive someone of an opportunity to do that kind of thing is to rearrange those things in the environment, or to disturb their existing or expected pattern, in such a manner as to make it impossible for him, with his abilities and means, to achieve his end[11]. Not all opportunities are excellent or even good, and it is possible to diminish someone's opportunity to do something without depriving him of every opportunity to do it.

In a changing world, things may perish and deteriorate; abilities, means and opportunities may be gained and lost — often, but not always, as the result of human action. Obviously, if human agents are to respect one another as rational creatures, they ought not to destroy or diminish another's abilities or means or opportunities. But they also happen to live in a world of scarcity : there are not enough useful things to satisfy everybody. If there were enough useful things within the immediate reach of all, the respect for others, which common morality ordains, would reduce to the principle that it is morally impermissible to destroy or diminish any other's abilities by destroying or impairing or paralysing or damaging some part of another's body — by interfering with it against his will. It would be impossible to deprive him of the means to do what he wants or to diminish his means, since means would be abundantly available to all. And there would be no things which would be controllable by some but not by all, yet would have to cooperate if one is to achieve his ends[13].

In a world of scarcity, the fundamental principle of common morality cannot be reduced in this manner. In such a world, it is possible not to respect another by interfering not only with his abilities, but also with his means and opportunities. Non-interference with his body is not enough to satisfy the fundamental requirement of morality. To put it differently : in a world of scarcity, property is a praxeologically necessary presupposition of common morality[12]. It is impossible to observe the fundamental moral requirement, if there is no way of finding out which resources, which things in the world one may appropriate for one's own use. The fundamental principle itself, however, implies that one may appropriate for use anything which is not another's, insofar as it is used in morally permissible ways. The act of appropriation itself, i.e. of bringing into use, in no way disregards the respect owed to others as rational creatures, unless of course, it is an act of expropriation. To be sure, it may happen that one is acting in a morally impermissible way, if one appropriates something, which has not yet been appropriated, in order to deprive another of the opportunity to appropriate it, e.g. when the latter urgently needs the thing (or needs it more urgently

than one does oneself), and is preparing to undertake to appropriate it, and if one intends to keep it from being used by him. But even so, one is not, in a world of scarcity, in which the future is necessarily uncertain (otherwise action would be inconveivable in it), failing to respect him *as a rational creature* : one is perhaps failing to respect oneself, i.e. failing to be what common morality ordains one to be, viz. a respectable person, a person who deserves to be esteemed by his fellows — but we cannot disregard the distinction, which is after all not very subtle, without destroying the intelligibility of common morality.

There is nothing in common morality that rules out an act of (original) appropriation as being disrespectful of others as rational creatures. It is therefore possible in good conscience to appropriate something which has not been appropriated before, or which has since been abandoned.Of course, once a thing has been appropriated it may be abandoned or transferred to another — or to an organized community or group. Not to abandon or transfer it is not failing to respect others as rational creatures, even if to do one of these things may, in some circumstances, be the appropriate thing to do, i.e., the thing which one ought to do out of respect for oneself. To abandon one's property is to make it available for morally permissible re-appropriation; to transfer it to another or to an organized group is, as such, morally permissible. But one cannot maintain that it is consistent with common morality that all things, or all things of a certain kind, *are* the common property of a group, regardless of any act of appropriation : the members of a group may agree that what each of them appropriates (or has appropriated) will be (or will have been) appropriated on behalf of the group; but they cannot claim that whatever is appropriated by anybody inside or outside the group is appropriated on behalf of the group, simply because there is a group. The act of appropriation is always and necessarily the act of an individual — of the individual who actually and physically performs it, or of the individual who conceives the idea of bringing a thing or resource into use and hires the services of others to do it for him. To say otherwise is to deny the fundamental principle of morality, since it would be tantamount to justifying interference with another's use of his own body, against his will, even when he is not failing in his respect towards others. All property must start as private property.

Setting out from an analysis of human action, we can discover in what way common morality, which presupposes both that man is a rational agent and that he is an embodied self participating in a

system of nature, ordains that we should not fail to respect one another : it is morally impermissible to use another's property, either his body and its parts or those things which he has brought into use or which have been transferred to him with the consent of the previous owner, who in turn has not obtained it through expropriation, and so on. To use another's property without his consent is to fail to respect him *as a rational creature* — which he is by his very nature; and this, we should not forget, may be his only ground for a claim to our respect[14].

Respect for others is the basis for the principle that it is morally impermissible to do anything whatsoever by appropriating what belongs to another, without his consent — i.e. by expropriating him. Respect for oneself is the basis for the principle that it is morally impermissible not to act in good conscience, except when one's conscience itself is corrupted — i.e., for the principle that it is morally impermissible not to exercize our reason in the attempt to discover moral truth, what we (being the kind of creature we are) ought to do[15]. But no man can in good conscience forbear to respect others. Respect for others is implied by respect for oneself; but the converse is not true, since one can respect others in more ways than one can respect oneself. Failing to observe the principle of beneficence, a man may fail to respect himself, without failing to respect others as rational creatures : I owe it to myself as a rational creature to help others, not to them. On the other hand, it is logically impossible for any individual not to respect himself in the manner in which he ought to respect others as rational creatures : it is logically impossible to assault oneself, to steal from oneself, to appropriate oneself or to expropriate oneself against one's will, except by accident or non-negligent ignorance; and it is logically impossible to defraud oneself.

In a fundamental sense, appropriating another's means or resources against his will, for whatever purpose, consumptive or productive, always involves the use of force, the direct or indirect exercise of physical power. This is so even in cases of fraud : fraud involves the telling of lies and/or the making of false promises, promises which one does not intend to keep; whereas unsuccessful fraud is no more than an attempt at impermissible appropriation, successful fraud consists in holding, using, enjoying or drawing income from what belongs to another. Fraud is similar to theft, but is not identical with it, at least not in the *modus operandi*. E.g., when I, a veterinarian, tell my neighbour that his dog, whose barking keeps me awake at night, ought to be put to death because the animal

carries some very dangerous virus with it, and give him some pills with which to kill the animal, then, if he does as told, there is still a direct use of force on, a physical interference with another's property against his will, even though it is exercized through an "agent", perhaps, as in this case, the victim himself. Fraud is the most common method for appropriating the *services* of another person against his will, i.e., for putting to use those things which are useless when not properly handled in ways which one, for lack of means or abilities or both,cannot bring about oneself. In the example given above, there is a double appropriation by the veterinarian : of the dog and of the neighbour's services (and in a metaphorical sense, of his *time*)[16]. If it is true that the victim of fraud does what he thinks he is doing voluntarly, what he thinks he is doing is not what he is in fact doing : barring negligence on his part, we may say that even if he agrees to act as the "agent" for the defrauding "principal", he agrees to cooperate in the execution of a plan, which is not the principal's real plan.. In this sense, then, fraud too involves the (indirect) exercise of physical power in allocating another's property.

Owing to the physical nature of the world, it is not surprising that failing to respect others as rational creatures always involves the use of force, the direct or indirect physical interference with another's property (includng his physical person). I owe it both to myself and to others not to impose my will on them; but I only owe it to myself to "love my neighbours" : it is not morally permissible for them to force me to do so — in the strict sense of "love" it is psychologically impossible, and in any other sense of the term, they would merely be appropriating me as a means to their ends

By repelling an agression, the victim, his agent or someone else may avert his appropriation or expropriation, and hence a breach of the condition of being respected as a rational creature in which he found himself before the agression started; but it is impossible to avert thereby the failure of respect the agressor owes himself — since this failure arises with the intention and is magnified by the actual undertaking, whether or not the undertaking ends successfully. The defensive use of force can *never* suceed when the wrong consists in the failure of self-respect, of the respect a rational creature owes itself. Hence, it should not be pushed beyond the point where it ceases to protect the victim of an agression from the consequences of the aggression itself. Within this limit, however, it is morally permissible, though not required : if a person owes it to others to respect them as rational creatures, he owes it to himself to respect his own rational nature — it is quite possible that he finds his conscience

counselling non-resistance.

It follows from the preceding arguments that the principle of force is the only principle in common morality permitting the appropriation or expropriation of another against his will. If the fundamental principle of morality is not to be rendered unintelligible, we cannot ask for more and should not settle for less. It is not possible, within our moral system, to find a rule permitting the use of force upon the defendant in the case of the aplastic anemia patient. However morally impermissible the former's decision to deprive his cousin of a vital opportunity, since he did not violently or fraudulently appropriate another or another's property, it would be morally impermissible to use force upon him — although it may be morally permissible to deprive him of a number of opportunities, when his plans are seen to depend on the cooperation of other persons or their property. "Moral society" is not defenseless merely for being moral.

Rights

Lawyers and legal philosophers are used to discussing rights; talk about moral permissibility may, on the other hand, make them feel uneasy. In political philosophy the term 'right' is making a strong come-back, but the concept is still controversial. Moreover, the controversy seems to generate more heat than light. I think the concept of "a right" is a highly useful one, but also that it is, strictly speaking, redundant. There is no system of rights apart from our system of morality, which we cannot conceive except as a normative system of universal validity.

We can, and — I believe — may, define "*X* has the right to do *A*" as follows : *it is morally impermissible for anybody to destroy or diminish X's power to do A, by appropriating against his will anything whatsoever that belongs to X.* We may use here the auxiliary definition : *X* has the power to do *A*, if, and only if, *X* has the abilities and the means to do *A*, as well as the opportunity to do it. The *definiens* in the former definition should not be construed as presupposing that "*X*" has the power to do *A*. If "*X*" has the requisite abilities and means, but lacks an opportunity to do *A*, he has at that moment no power to do *A*, but saying that he has the right to do *A* implies saying that he has the right to do it if and when an opportunity arises. It also implies saying that he has the right to do it if and when he achieves the requisite level of ability, and if and when he succeeds in bringing together the requisite combination of means.

On the basis of this definition it follows that this is also a principle of common morality : *every person has the right to do with his own what he wills.* For this principle is equivalent to the precept that it is morally impermissible for anybody to appropriate anything whatsoever that belongs to another, without his consent; and hence, following the interpretation of 'respect' discussed in the previous section, to the fundamental principle of common morality insofar as it applies to respect for others : that every person has the right to do with his own what he wills, and that it is morally impermissible for any rational creature not to respect every other rational creature as such, are, for human agents, identical propositions.[17]

It is of course a contingent question whether in some particular case the other consented to the act of appropriation or not, whether the appropriator acted in good faith, whether he followed the recommendation of his conscience, whether his conscience was not culpably erroneous or corrupted. Expropriation, we have seen, involves the use of force upon the property of another against his will. But it is possible to appropriate through an "agent", even the owner. A person may render services by making his property and abilities available to others : he cannot however alienate his intellectual and physical abilities, nor his ability to will. Hence, when someone consents to give up a piece of alienable property to another, his consent at the time the transfer occurred was sufficient; but when someone consents to render certain services, or promises to render certain services, his continuing consent is required. Thus if someone sells himself into slavery, but after a time changes his mind, the buyer cannot rightfully retain him.[18]

It should moreover be clear that merely to say that someone has the right to refuse aid to a dying man is not to say that whenever the dying man or another acting in his behalf appropriates something belonging to the callous person, without his consent, it is morally required for yet another to stop him : one is not morally obliged to act as a police man, even when it is morally permissible to do so. In primitive law it was often recognized that if a wronged person deserved what was done to him, he should not count on even his relatives' help. It is not morally permissible to violate the callous man's rights, but it is morally permissible not to come to his assitance : we respect him sufficiently by not aggressing against him; for the rest, whether we fail to respect him by not coming to his defense, depends on whether we fail to respect ourselves in not doing so.

Contracts made under coercion

Coercion is a method of getting other people to do what one wants them to do. Basically, there are two types of method to achieve this : those relying on the carrot and those using the stick, those relying on rewards, and those relying on punishments.

Coercion always involves a threat to another, but what distinguishes coercion from other methods of "wielding the stick" is that it always involves a threat to appropriate another person or something that belongs to him, against his will — either the person whose actions one wishes to influence, or some other. A threat is always a threat to cause some inconvenience, harm, loss of pleasure, injury, loss of wealth, etc. Not all threats are manipulative : one may threaten to do something to another, regardles of what he will do. Coercive threats are manipulative, but not all manipulative threats are coercive, since not all manipulative threats involve a threat to appropriate something that belongs to another. The person to whom the threat is addressed may not be the only person threatened. To threaten to commit suicide unless another does something is manipulative but not coercive; to threaten to do something either to the person whose behaviour one seeks to manipulate or to someone he cares for is to make a manipulative threat, but not necessarily a coercive threat.

To threaten to do something is like giving a promise : it is to make known one's intention, or to be known to intend to do something which one is (or which one is at least believed to be) able and willing to do. Obviously, if it is morally impermissible to do something, it is also morally impermissible to intend to do it, and *a fortiori* to threaten to do it. Not all coercive threats are morally impermissible, and some morally impermissible threats are not coercive. Making a threat may be morally impermissible because in making it one fails to respect oneself as a rational creature, without failing to respect others as rational creatures — and such threats are not coercive. Since it is morally permissible to use force upon another or his property in defense against his aggression, it is also moral to threaten to use force when attacked, to appropriate the person or the property of the aggressor against his will — such threats, though coercive, are not morally impermissible : if they succeed in deterring aggression, they are effective in their own right; if they do not, the question may arise to what extent the threat may be carried out. But we need not go into this question here.

It is evident that the mere fact that A coerces B to do x does not mean that B is no longer free not to do x, nor that when he does x,

he does not do it freely. Coercion may turn one into the mere "agent" of another, but it need not do so. The person who is being coerced must still decide whether to give in to the demand or to refuse to comply with it. It depends on the alternatives before him whether it is morally permissible for him to do the one rather than the other thing : the mere existence of a coercive intervention does not mean that he should not be blamed for or credited with the consequences of his actions. If a coercive threat is not per se morally impermissible, it follows that non-coercive threats may also not be morally impermissible in some circumstances — e.g., threats to refuse to exchange with him, or threats to ostracize him.

We are now in a position to evaluate the principle that contracts made under coercion do not morally oblige the coerced party. We assume here that someone, *A*, proposes a contract to another, *B*, threatening to do something which he has no right to do, unless *B* accepts the deal. No matter what the terms of the contract may be, it is clear that *B* may accept without thereby incurring any moral obligation beside those he may have on other, independent grounds. He temporalily succeeds in averting *A*'s aggression. If, by the time he is supposed to undertake to do what he promised, the threat still exists, he should attempt to determine in good conscience whether he ought to resist or whether he may submit to *A*'s power over him. It is at this point that the nature of the performance becomes relevant — but the fact that it is a "promised" performance is irrelevant : he is still acting under a coercive threat, i.e., under a threat which, *ex hypothesi*, it was morally impermissible for *A* to issue. The seriousness of the threat is not an issue here. If, on the other hand, by that time, the threat no longer exists, the situation is even more simple : since the act of agreeing to the contract was not in any sense the act of giving a promise, but an act of defense against an intended aggression, no problem can arise — even if the person who had been coerced is under a moral obligation to do what he "promised", the moral obligation must have some other ground; it cannot stem from his promise.

What if the party who issued the coercive threat had already done his part of the deal ? It is *not* morally impermissible for the coerced party to keep what he received, not to pay for the services rendered by the other — for although the other did his part under the illusion that the coerced party would eventually do his, no fraud has been committed by the latter : the person who obtained his consent by means of a coercive threat cannot be excused for his ignorance of the principle that coercion voids a contract by turning the other's

consent into a defensive act; he may therefore be considered as having abandoned in the hands of his victim what he gave him.

Contracts made in necessity.

Suppose a person finds himself in mortal danger or in extreme need. He runs into another who has the ability and the opportunity to avert the danger or to relieve his need. The other agrees to help, but wants something in return — either a good or a service. We have already seen that he has the right to refuse to help. To respect another as a rational creature it is not necessary to act as his keeper. If he has the right to refuse, he also has the right not to refuse provided his price is paid. We should distinguish cases where it is morally impermissible for him to ask that price, even any price, and cases where it is not. If it is morally permissible for him to ask his price, and the other accepts, there is a morally binding contract, and if, afterwards, the "rescuer" has done his part, i.e., has averted the danger or relieved the need, not to keep his word would be, for the *formerly* necessitous party, not only morally impermissible, but also "ilegal" . he has appropriated part of the other's life or property under false pretenses — he has committed fraud — by failing to respect one who did not fail to respect him.

In cases where it is morally impermissible for the prospective rescuer to ask his price, the answer to the question whether the necessitous party is morally obliged by the contract is not as straightforward. The prospective rescuer has the right to ask any price. Let us suppose that it is morally impermissible for him to ask the price he does in fact ask. The necessitous party is faced with the choice between perishing and agreeing to the proposal. Suppose he agrees. There is a contract. Does it morally oblige the necessitous person ?

Let us suppose that the rescuer demands payment in advance, i.e. that he will not help the other until the latter has performed his part of the deal. It may be that the service consists in violating a third person's rights, or more generally, in doing something which it is objectively morally impermissible to do. If the necessitous party judges in good conscience that in complying with the demand he would not be failing, under the circumstances, to respect himself as a rational creature, then it is morally permissible for him to do what is otherwise morally impermissible. If he he is not failing to respect himself as a rational creature, he cannot be failing to respect others. We do not condemn a person, and we do not blame him for the consequences of his action, if it would be unreasonable to expect any

rational human being to hold that, under the circumstances, it is morally impermissible to do that sort of thing — even if it would not be unreasonable to expect some rational person to maintain that he himself would not do it, not under the given circumstances anyway. In any case, there can be no doubt that the necessitous party is not morally obliged by such a contract. The question is whether he ought to be condemned for complying with it, not whether he ought to be condemned for reneging on it.

If the payment is not as such a morally impermissible action — e.g. if it consists in paying a certain sum of money, or performing a specific service such as plumbing or digging a ditch —, but is such that under the circumstances it is nevertheless morally impermissible for the prospective rescuer to insist on that payment, then, if the necessitous party performs first, while he is still in need, he does so for the very same reason that made him agree to the contract in the first place — the imminency of the danger or the extremity of the need. He will pay, not because he is morally obliged, but because he apparently finds it preferable to pay, rather than to perish. No matter how morally impermissible it may be for the rescuer to ask that price, he is not failing to respect the other as a rational creature. If the latter thinks being helped is worth the price asked, that is his choice.

It is different however if the prospective rescuer merely asks the other to promise to pay. If it is, as we are assuming at present, morally impermissible for him to insist on the performance he demands, it is also morally impermissible for him to insist on a promise to deliver that performance. Here, however, there is no limit to the price he can ask, no cut-off point where the necessitous party will say that the danger or the need is not as bad as paying the price : by *agreeing to the contract* he ensures his survival (or health or sanity or whatever) *now*. Agreeing to a contract is a small price indeed for survival. He is not failing to respect himself as a rational creature by making a false promise under the circumstances. And, again, if he is not failing to respect himself as a rational creature, he cannot be failing to respect anybody else. Of course, the mere fact that one is in need does not justify all false promises, false statements and so on one might care to make. A rational creature can fail to respect himself, even when he is in need.

But if it is morally permissible for the necessitous party to renege on his promise, does it not follow that he is nevertheless violating the other's rights ? The other did in fact help him; should he therefore be legally obliged to return or compensate for what he received ? To answer affirmatively is to insist that law and morality can after all

conflict : the judge would be permitted to use force upon an innocent person[19]. However, although the rescuer did in fact help the necessitous party, he has no legally enforceable claim on him to return the goods or compensate for the services involved in the rescue operation : he "gambled", one might say, on the other's conscience being more demanding on himself than morality requires — and he lost. He had no excuse for not knowing that in the circumstances of the contract the other party would not be failing to respect himself as rational creature by making a false promise : there can therefore be no question of fraudulent appropriation by the latter of the rescuer's property or services.The "circumstances of the contract" include, of course, the fact that the rescuer was failing to respect himself as a rational creature. He was not acting respectably; hence, although the necessitous person was still bound to respect him as a rational creature, he was not bound to respect the other as a respectable person, i.e., as what he was not.

Contracts

There is nothing intrinsically moral about contracts. We have seen that even if the rescuer was acting within his rights in proposing the contract, although it was morally impermissible for him to do so under the circumstances, and the necessitous party was acting within his rights in pretending to "accept" it, it does not follow that the contract, which *ex hypothesi* is morally defective, is nevertheless "legally" valid, and therefore of such a kind as to make it morally permissible (or even required for the agents of the law) to enforce it : although the immoral may be legal in the sense that it is morally impermissible to resort to force, violence or the fraudulent appropriation of the wrong-doer's life or property, it does not follow that it is morally permissible to use force to assist someone in carrying out what it is morally impermissible for him to do.

Giving a promise is not the same thing as doing what one promised to do. Even a freely given promise does not morally oblige a person to do what it is not morally permissible for him to do — or to do something which would make it impossible for him to do what he judges in good conscience to be such that he ought to do it — even at the "cost" of breaking a promise. But in the latter case, there may be a violation of the promisee's rights : this will be the case when the latter has already done his part and if no ignorance of moral principle can be imputed to him in proposing the contract. Hence, even if the promisor does not fail to respect himself in reneging on his promise, he may fail to respect others and therefore himself in not returning

or compensating for what he received under the contract. In any case, people have the right to break their promises, even if it is not right to do so, whenver breaking the promise does not entail violating another's rights.

Pacta sunt servanda is a moral rule; breaking one's freely given promise is, as such, morally impermissible, but it is not per se illegal to do so : one does not per se fail to respect others as rational creatures in doing so. *Pacta sunt servanda* does not imply that contracts ought (or even may) be enforced merely because they are contracts

The doctrine of freedom of contract is implied by the fundamental principle of common morality insofar as it applies to respect for others — that every person has the right to do with his own what he wills —, but it does reduce to non-sense when coupled with the political thesis that all contracts, which are not voided by coercion or fraud, ought to be enforced, i.e., with the thesis that failing to honour a contract per se violates another's rights. Nothing is more subversive of common morality than the idea that because a contract may create a moral obligation, it also creates a legal obligation. There is no justification in common morality for coercively preventing a rational creature from cultivating a reputation of untrustworthiness.

It is not the business of the law to "enforce contracts". It is the business of the law to enforce respect for other creatures as rational creatures, i.e. to enforce "property rights" — but it is of course true that this will often involve the law in interpreting contracts.

One final comment : the preceding discussion of contracts made in necessity has implicitly taken for granted that the parties to such contracts are isolated from the rest of the world. The situation is entirely different when one prospective rescuer faces a multitude of necessitous persons each trying to secure his assistance, or when one needy person faces a multitude of prospective rescuers each trying to sell their services, or when a multitude of needy people face a multitude of people able to help. The discussion has also rested on the implicit premiss that the rescuer's performance was for him a "consumption expenditure", and not a "production expenditure". The moral principles do not change, but the situation does.

The conclusion, that contracts made in necessity do not morally oblige the necessitous party when the rescuer fails to respect himself by proposing unfair terms, still applies, but what constitutes failure to respect oneself in the one case may not do so in situations which are fundamentally different, because of the consideration due to other persons. One fails to respect oneself as a rational creature by

saving a cat and letting drown a human being : one does not fail to respect oneself by rescuing one human being, even if one deprives oneself thereby of the opportunity to rescue another.

This is especially so in the case of labour contracts, where the employer is not himself the final consumer of the worker's product, and where prices are determined on the market. The "one prospective rescuer vs. one needy person"-case does not tell us much about the moral status of the accumulation of capitalist wealth, which, as such, is gained on and through the market, by people who cannot lastingly diverge from market prices[20], and who make their living (if they make it — a poor capitalist is not a contradictio in adjecto) by selling at prices which other people are willing and able to pay — mostly, by any statistic, to the "needy" workers. As a matter of fact, on a free market, the most "needy" workers able and willing to provide a certain quantity and quality of work of a given type are the first to be hired, since they are permitted to underbid their less eager fellows. It is true, of course, that a lot of "capitalist" wealth (usually understood as a wealth of a capitalist) has been gained not on and through the market, but through the use of coercion (especially of the state[21]) — but so has a lot of non-"capitalist" wealth; and it is not difficult to prove that even more wealth, "capitalist" or not, not to speak of "utility" has been lost in that manner. In any case, if every person has the right to do with his own what he wills, then, barring the inconsistency of common morality, no moral argument against the free market as such (or against wealth gained on and through the market) can withstand rational criticism. There may be too little charity[22], but there is no way to justify the use of violence and coercion as a means to produce some of the results that might otherwise have resulted from charitable donations and activities — not, at least, unless moral justification is possible while denying the truth of the principle that it is morally impermissible not to respect every human being as a rational creature.

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NOTES

[1] *Newsweek International*, August 7, 1978, p. 26.

[2] Alan Donagan : *The Theory of Morality*. Chicago and London, 1977.

[3] Donagan : *op.cit.*, p. 85.

[4] Donagan : *op.cit.*, pp. 149-157. On page 155, Donagan rightly observes that "the Pauline principle...is not an external stipulation. ... It is nothing but a general statement of a condition implicit in every precept of imperfect duty that is validly derivable from the fundamental principle itself. It is structurally necessary. And it manifestly entails that the precepts of imperfect duty — the precepts flowing from the principles of beneficence and culture — cannot be inconsistent with the prohibiting precepts [such as "It is morally impermissible to kill another human being at will"]."

[5] It is morally impermissible to act against one's conscience, since in doing so one would certainly be failing to respect oneself as a rational creature. But, with respect to actions which are not in themselves evidence of a failure to respect others as rational creatures, it is absurd to maintain that it is morally impermissible for you to do something "because *my* conscience says that *you* ought not to do it".

[6] It follows that common morality — although it certainly recognizes that because man can choose, he must choose — must reject the absurd "nihilistic" or "existentialist" consequence that fundamentally one choice is as good as any other. Choice is meaningless, if it is not possible to refer to a framework of values and opinions within which it may be evaluated. Choice presupposes a chooser : man cannot choose himself; he cannot choose not to be human, even if he can most certainly choose not to be humane. Philosophizing scientists (and scientizing philosophers) are simply mistaken when they infer from the silence of their disciplines on matters of value that therefore values are merely a matter of choice. When Jacques Monod wrote that "there is strictly no way of *objectively* proving that it is BAD to make war, or to kill a man, or to rob him, or to sleep with one's own mother", he was not only unwittingly pointing out the limitations under which modern scientists, rather masochistically, I should think, choose to labour, he was also dead wrong. If science can assist the zoo-keeper in improving the health of his lions, it is because it knows what constitutes the health of lions; but science proceeds from reason, so why should not reason be able to assist man in leading a healthy life himself — i.e., as Plato already argued, a just life ? If we can know the "natural perfection" of lions or roses, is it not infinitely more likely that we can know our own "natural perfection" ? And if we can, why on earth should we accept the ultimately silly view that it is a matter of indifference for us, as human beings, whether we should apply *that* knowledge or not ? whether we should exercize our reason in the attempt to

obtain it or not? And if the visitor from Mars still objects that he can see no reason why *he* should accept our morality, we may safely put his mind to rest. But it is a disturbing thought that so many more Martians seem to be eligible for Nobel prizes than humans. (Monod's quotation is taken from his contribution to Watson Fuller, ed. : *The Social Impact of Modern Biology*. 1971).

[7] Donagan : *op.cit.*, p. 86.

[8] Donagan : *op.cit.*, pp. 143-171. If we take as the basic principle of morality that it is morally impermissible for anybody to fail to respect every human being as a rational creature — i.e. : $(x)(y)$ — $P(f(x,y))$ —, then, if we assume that it is sufficient for defending the statement that it is morally permissible for x to do a — i.e., $P(dxa)$ — to show that merely by doing a, x is not failing to respect anyone as a rational creature — i.e. $(-Ey)\ F(x,y,dxa)$ —, we can easily prove that for the moral man it is always morally permissible to respect any human being as a rational creature — i.e. $(x)[(-Ey)\ f(x,y) \rightarrow .\ (z)\ P - f(x,z)]$ — as well as that for the moral man nothing is ever both morally permissible and impermissible — i.e., $(x)[(-Ey)\ f(x,y) \rightarrow .\ - P - (dxa) \rightarrow P(dxa)]$. If man can be moral, he need never be morally perplexed.

[9] Cf. my contribution to *Standaard Encyclopedie voor Opvoeding en Onderwijs*, Antwerpen, s.v. "Norm, Normativiteit". (In press).

[10] Donagan : *op. cit.*, p. 35

[11] Thus it is possible to deprive someone of his ability to do a particular thing, not only by depriving him of the means to do that thing, but also by changing the situation or opportunity. A man may be able to solve a complex problem, yet lose the ability completely if someone is staring at him, or whistling within hearing range.

[12] Hume, in the *Treatise*, and even more explicitly in the *Principles of Morals*, drew attention to the impact of scarcity. Some scarcity is in any case a presupposition of any intelligible concept of action.

[13] To suppose otherwise is to mantain that something a man needs in order to conclude his venture successfully is not available — which contradicts the assmption of abundance of means. In an abundant world the environment would never have to "co-operate".

[14] In a world of scarcity, depriving another of an opportunity is not evidencing a failure to respect him as a rational creature, for if the thing, upon the "co-operation" of which success for him depends, is not *his* but either one's own body or one's means or something that is also an opportunity for another, to say that one fails to respect

him as a rational creature by using that thing in some particular way would be tantamount to saying that it is after all his.

[15] For what is perhaps the best short account of the ethics of self-respect, see H. B. Veatch : *Rational Man. A Modern Interpretation of Aristotelian Ethics.* Bloomington and London, 1962.

[16] In handing over the pills, the veterinarian, *acting as a vet*, and not merely as a "good neighbour", is "selling" advice, but not on the terms implicitly consented to by the dog-owner — who rightfully expects the advice to be in his interests. If he had paid for it, the fraudulent appropriation of the sum of money and the dog-owner's services would have been manifest. That, in the example, the "price" was zero, does not alter the basic issue.

[17] Let me stress that "with his own" means just that : "with his own, *but only with his own*".

[18] Therefore the enforcement of labour contracts can only mean forcing the employer to pay the agreed on wage, or forcing the labourer to return the wage he received for services he chose not to render. The enforcement of labour contracts should not lead to compulsory labour.

[19] "Innocent" in the sense that he did not fail to respect others as rational creatures, not in the sense that he is morally innocent : he may have failed to respect himself.

[20] Böhm-Bawerk *(Macht oder Oekonomisches Gesetz*, Vienna 1914) exhaustively analyzed the impact of scarcity, whether natural or contrived, on wage rates. Although the wage rate on the market may not conform to our preconceptions of what it would be just for *this* rich employer to pay to *this* poor worker, it is nevertheless just in that it is the only one which does not presuppose the morally impermissible uses of force, coercion or fraud by one group of workers against other workers (by depriving them of access to the market) or against employers (by depriving them of access to other workers, or by one group of employers against other employers or workers. A just wage, by the way, is not the same as a charitable wage; see note 22 below.

[21] Where the state claims the privilege and monopoly of "legitimate" force (by denying its citizens the means and the opportunities and the right of organizing their own defense), it is fully responsible for the coercion which it permits some particular individuals or groups to use against others — whether it explicitly granted the permission or not.

[22] Charity may take the form of raising the wages. But this will often have the inconvenience of attracting more workers than can be employed even at the lower wage. Hence this procedure leads to the necessity of a selection (not on economic but on charitable grounds) which will in the end destroy one's capacity to be charitable or generous. Charity is a consumption expenditure; it should not be allowed to interfere with the process of generating wealth, unless one has a high preference for relieving present need as against future need. On the free market *everybody* receives an income according to his ability to serve the needs of his fellow men, and is free to spend it according to his own needs. Charity flows from the able to the needy : it is a way for the able to spend their money, not their ability. (For stimulating discussions, see *The Economics of Charity.* published by the Institute of Economic Affairs, London, 1973).