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In *A Theory of Justice*, for example, Rawls makes it clear that his theory is a theory of *human* social justice and his two principles of justice, valid for humans in virtue of their nature as free and rational *human* beings (138, 251–257). He also claims that his "Kantian interpretation" of justice as fairness is reasonably "faithful to Kant's intentions" (257). "It might appear," he says, "that Kant meant his doctrine to apply to all rational beings as such . . . I do not believe that Kant held this view, but I cannot discuss the question here" (257). Rawls's view of Kant is out of keeping with the way most philosophers interpret Kant; but, however right or wrong his interpretation of Kant may be, it is important to realize that one reason why people have been inclined to interpret Kant as requiring that moral principles apply to rational beings as such is the intuitive plausibility of such a requirement. Rawls does nothing (explicit) to justify the relativity to mankind he builds into his theory, and does not seem to recognize that such relativity is a problem for a moral theory, going as it does against some of our initial intuitions or ingrained traditional beliefs about what morality is.

Some of our problems, then, are problems for Rawls and others. I do not mean to suggest that there is philosophical safety in numbers here. But if empirical relevance really is important in ethics—and Rawls's imposing theory, which tests conceptions of justice against the facts of human psychology and economics, is some testimony to that—then perhaps we should be willing, despite lingering Kantian doubts, to accept the idea of human-relative morality. To the extent, furthermore, that the earlier-discussed arguments of Marx, Freud, and Nietzsche are *valid only if* they implicitly employ a human-relative principle of morality and ignorance, and are widespread and compelling *kinds* of arguments, there is genuine support for the principle of morality and ignorance in such a human-relative form. If we are willing, then, to accept the idea of morality that is valid relative to mankind, the plausibility and fruitfulness of the principle of morality and ignorance thus conceived may well be worth the price.[39]

of a hypothetical being with certain ideal characteristics who is otherwise (like) a normal human being. See "Ethical Absolutism and the Ideal Observer," reprinted in W. Sellars and J. Hospers, eds., *Readings in Ethical Theory*, 2nd ed. (New York: Appleton-Century-Crofts, 1970), p. 220f. I think the similarities and differences between Firth's theory and the view of the present paper are both interesting and instructive. For one thing, Firth advocates a certain *analysis* of ethical concepts, whereas the principle of morality and ignorance need not be analytic to be valid and, in any case, expresses only a *necessary* condition on the validity of certain moral principles. (Nor should the principle be strengthened into an "if and only if" principle; for it seems perfectly possible that there should be two *contrary* principles of moral obligation *neither* of which is excluded by the principle as it stands.)

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## THE STRUCTURE OF A SET OF COMPOSSIBLE RIGHTS

ALTHOUGH much has recently been written on the characteristics that a set of rights must possess to be *just*, relatively little attention has been paid to the characteristics that a set of rights must possess to be *possible*. This is all the more surprising because a standard, and appropriate, line of attack on various accounts of just rights has consisted in showing that some members of the set of rights under consideration are not compatible with other members of the same set. So the criticized theory is held to have failed as an elucidation of what is a set of just rights, not only or necessarily because it is at odds with some long-standing intuitive beliefs about justice, but because the set of rights it is said to imply is impossible.

The sense of 'impossibility' intended here is the strong sense of logical impossibility. And the reason it applies to such cases runs as follows. A right denotes a range of actions that its possessor may perform. It further implies a duty, on the part of persons other than its possessor, not to act in such a way as to interfere with or prevent those actions. Rightful actions—actions that are exercises of rights—are thus both *permissible* and *inviolable*.[1] Actions interfering with or preventing the performance of rightful actions are themselves impermissible. Suppose there is a set of rights such that action $A_1$ falls within the range of rightful actions denoted by a right that $X$ possesses, and action $A_2$ falls within the range of rightful actions denoted by a right that $Y$ possesses. And suppose that

[39] See my "The Morality of Wealth," in W. Aiken and H. LaFollette, eds., *World Hunger and Moral Obligation* (Englewood Cliffs, N.J.: Prentice-Hall, 1977), pp. 124–147, for some other considerations that might incline one to accept the idea of human-relative moral obligations. For a different way of arguing for human-relative morality, see R. Coburn, "Relativism and Morality," *Philosophical Review*, LXXXV, 1 (January 1976): 87–93.

[1] The term 'inviolable' is more properly applied to the right itself—rather than to actions that are exercises of it—in referring to its relation to the actions of others. Since, as far as I know, we unfortunately lack a corresponding single adjective for actions, I have taken the liberty of extending its application to exercises of rights.

the occurrence of $A_1$ constitutes an interference with or prevents the occurrence of $A_2$. What is the deontic status of $A_1$? It is at once a permissible action because it is an exercise of $X$'s right, and an impermissible action because it is a violation of $X$'s duty not to interfere with or prevent an exercise of $Y$'s right. This contradiction implies that the set of rights in question is logically impossible.

I shall call a set of rights devoid of such contradictions a set of *compossible* rights. The incompossibility of rights can assume either of two dimensions: incompatibility may exist between different persons' exercises of different kinds of right; or it may exist between different persons' exercises of the same kind of right. My exercise of my right to free speech may interfere with your exercise of your right to privacy; or my exercise of my right to free speech may interfere with your exercise of your right to free speech. One objection that is sometimes registered to such exemplifications of incompatibility consists in claiming that they enjoy whatever damaging plausibility they appear to possess by trading on what are merely abbreviated descriptions of the rights involved. For instance, it is often and correctly remarked that a right to privacy does not entitle one to control others' activities beyond certain physically defined confines, such as one's home. Similarly it is said that a right to free speech does not include a right to have one's speech heard, but rather only enjoins noninterference with one's use of whatever means of communication are at one's disposal.

What I shall try to show in the argument to be advanced is that objections of this sort, when true, reveal an essential requirement for the compossibility of rights. However, it is not invariably the case that such objections, to allegations of incompossible rights, *are* true. They are sometimes false because, with respect to some kinds of right, no more extended description, of the sorts of action they denote as rightful, can avoid the consequence that one person's exercise of such rights is nevertheless (still) incompatible with others' exercises either of the same kind of right or of different kinds of right within the same set of rights. Someone called upon to adjudicate between two persons whose actions are mutually obstructive and each of whom is able to show that his own action falls within the range denoted by a claimed right, will, in considering his verdict, be bound to conclude that at least one of these two claimed rights is invalid. The grounds for this conclusion will depend upon whether each of the two actions in question is an exercise of the same kind of right or of two different kinds of right. If the same, then the denial of validity is based upon a denial of



the validity of the kind of right both are invoking, and both persons are mistaken in asserting a duty on the part of the other to refrain from interference. If different, then the denial of validity is based upon a denial either of one person's claim to possess the right he claims to possess or of the validity of the kind of right he is invoking; in either case, he is mistaken in asserting a duty on the part of the other to refrain from interference. Put briefly, the denial of validity to a rights-claim may be based either upon the denial of the "existence" of that kind of right or upon the denial that the claimant in question has that kind of right, even though others do. The point is, in both cases, that the rights invoked by the claimants are not compossible. The set to which both rights are said to belong—and which, in a sense, the adjudicator personifies—is not a possible set if it is so formulated as to include them.

The foregoing observations suggest a more explicit statement of the condition that a set of rights must satisfy to be possible: *A possible set of rights is such that it is logically impossible for one individual's exercise of his rights within that set to constitute an interference with another individual's exercise of his rights within that same set.* Thus, to establish the characteristics of the structure of a possible set of rights, we need a general description of the conditions under which two persons' exercises of their rights—two persons' actions—cannot be mutually obstructive.

All actions consist in some kind of motion: the passage of some body from one place to another, the displacement of some material substance from one portion of physical space to another. Interference by one individual's action with another's occurs if and only if at least one of the material or spatial components of the one action is identical with one of the material or spatial components of the other action. Let us call the material and spatial components of an action its *physical components.* It follows that one individual's action cannot interfere with another's if and only if none of their respective physical components is identical. A rule or set of rules assigning the possession or exclusive use of a particular physical object to a particular individual, will, if universally adhered to, exclude the possibility of any individual's actions interfering with those of another in respect of that object. A rule or set of rules assigning the possession or exclusive use of each particular physical object to particular individuals, will, if universally adhered to, exclude the possibility of any individual's actions interfering with those of another in any respect. Such property rules would thus assign, to individuals, ranges of permissible and inviolable actions

—rights—composed of their uses of their allotted bundles of physical objects. And the set of rights thereby prescribed would satisfy the previously stated condition of being possible inasmuch as all its members would be compossible.[2]

The thesis thus being advanced here is that any possible set of rights contains a set of titles to objects. A title is a relation between two terms: the name of an agent and the name of an object. Sets of rights based on titles are to be distinguished from those formulated solely in terms of claims to others' forbearance from—or forbearance from interfering with—certain *kinds of action*. For the sake of brevity, I shall refer to the former as *title-based* sets of rights and to the latter as *action-based* sets of rights. In drawing this distinction, I certainly do not wish to suggest that title-based sets of rights fail to constitute ranges of rightful actions, or to imply the absence of duties to forbear from interfering with those actions. Rather, the distinction lies in the manner in which the description of these ranges of rightful actions is formulated. If actions are characterized as uses of objects, then the necessary condition of an action's being rightful in a title-based set of rights is that it be a use of, and only of, objects belonging to the user.[3] Whether this is also a sufficient condition of rightfulness in such a set of rights is a question to be considered presently. On the other hand, a necessary and sufficient condition of an action's being rightful in an action-based set of rights is that it be a use of objects that is a use of the kind to which the user has a right to put objects.

Thus far I have offered reasons for claiming that a title-based set of rights is a possible set. But somewhat more needs to be said to show that an action-based set of rights is impossible. To see why it is impossible we must briefly attend to the concept of "a use." What is a use? To say "This is useful," "That is useless," "Of what use is this?" and so forth, is to affirm, deny, or query the existence of some purpose that might be served by the object to which reference is made. Often, of course, the kinds of purpose that the author of such utterances has in mind include only desirable ones. But this need not be so. The purpose informing the use of certain objects may be thoroughly reprehensible, yet there is nothing unintelligible about describing those objects as useful in that respect. In any event, we may take it that the phrase 'a kind of use' refers to a kind of purpose, and 'a kind of action' is the class of uses of

[2] Cf. my "Individual Liberty," *Proceedings of the Aristotelian Society*, LXXV (1974/75): 33–50, and "The Concept of Justice," *Ratio*, XVI (1974): 206–225, esp. 215–216.

[3] See below, p. 771, for a refinement of this condition.



objects informed by a certain kind of purpose. An action-based set of rights ascribes rightfulness to all actions informed by the kinds of purpose named in the specification of the forbearances it prescribes. From these few remarks it is, perhaps, already apparent that rights that are members of an action-based set of rights cannot be compossible. They cannot be so because there is no reason why two persons' actions, each of which is informed by certain kinds of permissible purpose, cannot have at least one identical physical component in common. Thus it is logically possible for one person's exercise of his rights to interfere with another's exercise of his rights within the same such set. The set is impossible. Nor is this difficulty overcome by some ordering of rightful kinds of purpose. For there is no reason why two persons' actions, each of which is informed by the *same* kind of purpose, cannot have at least one identical physical component in common. Indeed, if anything, this would appear more likely to occur in cases of two actions informed by the same kind of purpose.[4] Two persons' actions are precluded from being mutually interfering neither by their both being forbearances from interfering with actions informed by permissible purposes nor by their both being performances of actions informed by permissible purposes. No set of compossible rights can be a set formulated purely in terms of specified or implied permissible purposes.

Hence, to be possible, a set of rights must be title-based. The necessary condition of an action's being *permissible* in such a set of rights is that it is not a use of objects belonging to someone other than the user. And the necessary condition of an action's being *rightful*—permissible and inviolable—in such a set of rights is that it is a use of, and only of, objects belonging to the user. All rightful actions are permissible; only some permissible actions are rightful.[5]

What I wish now to consider is the previously mentioned question of whether the necessary condition of an action's rightfulness

[4] A failure to attend to this fact seriously damages Richard Flathman's essentially utilitarian conception of systems of rights, inasmuch as it "presupposes that interests and desires, objectives and purposes can be ranked and that . . . rights can be assigned, interpreted, and so on, on the basis of those rankings."; see his *The Practice of Rights* (New York: Cambridge, 1976), p. 235. On the impossibility of an action-based set of rights—as well as the absurdity of moral codes that do not include rights—see further, my "The Natural Rights to Equal Freedom," *Mind*, LXXXIII (1974): 194–210, esp. 195–201.

[5] On the two types of permissible action within a normative structure, see G. H. von Wright, *Norm and Action* (New York: Humanities, 1963), pp. 85–90, and "Deontic Logic and the Theory of Conditions," in R. Hilpinen, ed., *Deontic Logic* (Dordrecht: Reidel; New York: Humanities, 1971), pp. 165–167.

is also a sufficient condition of its enjoying this status. To ask this question is to ask whether there can be any purposes to which a person may be prohibited from putting those, and only those, objects which belong to him. Can there be certain kinds of purpose that it is not permissible to pursue, or, conversely, must pursued purposes be only of certain kinds? Suppose this were the case. Suppose that action $A_1$ is informed by a purpose that is prohibited. This means that, since $A_1$ is an impermissible action and therefore not a rightful one, there is *ceteris paribus* no duty to forbear from performing $A_2$ which is an action interfering with or preventing $A_1$: $A_2$ is a permissible action. But what if $A_1$ is an action satisfying the necessary condition of rightfulness? That is, what if $A_1$ constitutes a use by its agent of, and only of, objects belonging to him? If $A_2$ is an action interfering with $A_1$ it must constitute a use of at least one object used in $A_1$. But if this is so, then the agent of $A_2$ is using at least one object that belongs to the agent of $A_1$. His action is therefore not in conformity with the necessary condition of a permissible action in a possible set of rights: $A_2$ is an impermissible action. But an action cannot be both permissible and impermissible in one and the same set of rights. And, since the ground of its impermissibility—the title-allocating rule—is a necessary feature of a possible set of rights, whereas the ground of its permissibility—the purpose-prohibiting rule—is not, $A_2$ must be impermissible. Therefore, rules of the sort that imply the permissibility of $A_2$ cannot be part of a possible set of rights. It follows from this that an action's being a use of, and only of, objects that belong to their user is both a necessary and a sufficient condition of its being rightful. *Any* use by their owner of, and only of, objects belonging to him is an exercise of his rights, and others have a duty not to interfere with such actions. More generally, we may say that, to be possible, a set of rights must be title-based *and* must contain no rules prescribing or prohibiting actions informed by certain kinds of purpose.

Actions—uses of objects—vary greatly. The purposes to which objects can be put may require their physical transmutation through destruction, consumption, deterioration, conservation, modification, and so forth. Indeed, every action—as a "chosen intervention or nonintervention in the course of nature" [6]—involves the continuous transmutation of some objects, including the body of the person performing the action. Suppose there is an action $A_1$ and an object $O_1$ such that the performance of $A_1$ progressively works

[6] Cf. Stephan Körner, *Experience and Conduct* (New York: Cambridge, 1976), ch. 5.



some transmutations on $O_1$. To achieve the purpose of $A_1$ it is necessary that $O_1$ undergo changes such that, at some stages between the initiation and the completion of $A_1$, a description of $O_1$ that was true at a previous stage is no longer true. In this respect, the effect of $A_1$ upon $O_1$ is to transform it into a series of different kinds of object or, more simply, into a series of different objects: $O_2$, $O_3$, $O_4$, . . . $O_9$. (At precisely which point in the course of the performance of $A_1$ we should want to say that $O_1$ had become a different object is largely a matter of convention.) Now suppose that the agent performing $A_1$ possesses the title to $O_1$. Can we say that his title to $O_1$ in no way entails his having the title to $O_9$? Is it the case that, although other persons have a duty not to interfere with or prevent his use of $O_1$, they have no similar obligation with respect to his use of $O_9$? Clearly, this cannot be so. For if his title to $O_1$ does not give him a title to $O_9$, it cannot be said to give him a title to $O_2$, $O_3$, or $O_4$ either. But if he lacks the title to $O_2$, he cannot be said to have a right to perform actions involving the use of $O_1$. Neither $A_1$ nor any other action he might perform could be understood as the exercise of a right.

In the *Second Treatise* Locke considers an analogous, but reverse, version of this issue when he discusses the question of the stage at which a person acquires a title to a particular object he appropriates from nature.

> He that is nourished by the Acorns he pickt up under an Oak, or the Apples he gathered from the Trees in the Wood, has certainly appropriated them to himself. No Body can deny but the nourishment is his. I ask then, When did they begin to be his? When he digested? Or when he eat? Or when he boiled? Or when he brought them home? Or when he pickt them up? And 'tis plain, if the first gathering made them not his, nothing else could (s. 28).

Locke's claim is that if the objects did not belong to the individual in the first place "when he pickt them up," they cannot be said to belong to him in the last place "when he digested." And I am suggesting that, if an object does not belong to a person in the last place, it cannot belong to him in the first place. In both cases what is being asserted is that the transmutation of the object, through a chosen intervention or nonintervention in the course of nature, does not affect the agent's entitlement which persists through these changes. One's title to $O_1$ entails one's title to $O_9$.

But not all of an owner's actions need be of a kind involving his transmutation of all the objects involved in the action. For it may serve his purposes that some of his objects be used by another person. That is, his purposes can be such as to require that the use

of those objects be informed by the purpose of another. The circumstances in which, and the terms under which, this could be the case are evidently subject to considerable variation. For our present concerns however, and from the point of view of the basic features of rights-compossibility, one such kind of occasion is of special interest. This arises when the purpose of an owner is served by another's *unlimited* use of an object belonging to the former. For if $Y$ enjoys unlimited use of $O_1$ which belongs to $X$, it must be the case that there is no use to which $Y$ may put $O_1$ that $X$ or anyone else may interfere with. $Y$'s enjoying unlimited use of $O_1$ implies that it belongs to him and not to $X$. Thus if $X$ is to perform an action informed by a purpose which requires that $Y$ have this use of $O_1$, this action must consist in transferring the title to $O_1$ to $Y$. $X$'s transference of the title to $Y$ is an exercise of a right inasmuch as it is a use of, and only of, an object belonging to its user.

The foregoing discussion of two types of rightful action enables us to discern a further structural feature of sets of compossible rights. In each case the action in question commences with the use of an object to which there is a title $T_1$ and terminates in the extinction of $T_1$ and the creation of a title $T_2$. As was noted previously, a title is a relation between an agent and an object. In the case of rightful actions involving the transmutation of objects, the title of $X$ to $O_1$ is extinguished, and the title of $X$ to $O_9$ is created. In the case of rightful actions involving the transference of titles to objects, the title of $X$ to $O_1$ is extinguished, and the title of $Y$ to $O_1$ is created. In both cases the created title is *derivative* from, or *consequent* upon, the extinguished title, which thus stands in the relation of being *original* or *antecedent* to the former. Any derivative title must contain one of the two terms constituting the original title, and the link between the two consists in an action performed by the agent named in the original title. Of course, many titles that are derivative with respect to other titles may themselves be original with respect to still other titles. Thus $X$'s title to $O_9$ is derivative in relation to $X$'s title to $O_1$ and original to $X$'s title to $O_{10}$, which he produced from $O_9$. Correspondingly, $Y$'s title to $O_1$ is derivative in relation to $X$'s title to $O_1$ and original to $Z$'s title to $O_1$, since $Y$ transferred the title to $O_1$ to $Z$. More generally, we may say that, since rights are domains of permissible and inviolable actions, exercises of rights extinguish and create titles. The structure of a set of compossible rights is captured in the description of its members as being titles to objects that have mutually consistent causal and proprietorial pedigrees. To vindicate an action as rightful, one must show that it consisted of a use of an object to which the actor was entitled. To vindicate a title, one must show that it was created by a rightful action. Chains of vindication are thus historical or temporally sequential in form.



Finally, however, there is a significant caveat which must be entered with regard to the extendability of these chains of vindication. And this is of the utmost importance, not only to the logical completeness of a set of rights, but also to its moral evaluation. For it is clear that, although all the titles invoked to vindicate a title to an object must stand in a relation of sequential antecedence one to another, they cannot all be consequents one of another. Chains of title vindication must all terminate in original titles, which, therefore, cannot themselves have been created by exercises of rights. Those original titles are necessarily titles to objects the historically first uses of which constitute the earliest rightful actions performed with those objects. Thus, within the class of original titles required to vindicate any derivative title, there are some titles which—being necessarily nonderivative—are properly termed *ultimately original* titles. And although the formal conditions governing the compossibility of rights are logically sufficient to determine all derivative titles, they are not sufficient to determine the ultimately original titles that those conditions presuppose. More simply, once we have the class of ultimately original titles, what is required to infer the identities of all derivative titles is a set of (true) descriptive statements. But the class of ultimately original titles can be inferred only from a prescriptive statement—a principle—assigning objects to persons. This principle is properly viewed as the principle of distributive justice, and the titles it prescribes can be construed as individuals' natural rights.[7]

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## OUGHT, TIME, AND DEONTIC PARADOXES

> Eine Hauptursache philosophischer Krankheiten —einseitige Diät: man nährt sein Denken mit nur einer Art von Beispielen.
>
> —Ludwig Wittgenstein
> *Philosophische Untersuchungen*, #593

When in doubt, complicate!

THE distinction between actions that are obligatory (required, wrong, right, permissible, forbidden, and the like) and the circumstances in which such actions are obligatory

[7] For an account of this principle, see my "The Concept of Justice," *op. cit.*; and for an attempt to elicit some features of the natural rights it prescribes, see my "The Natural Right to the Means of Production," *Philosophical Quarterly*, XXVII, 106 (January 1977): 41–49.