

*Voluntary Euthanasia and the
Inalienable Right to Life*

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THE TANNER LECTURE ON HUMAN VALUES

Delivered at
The University of Michigan

April 1, 1977

and

Stanford University

April 11, 1977

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It is surprising that in this bicentennial period we have not yet heard an argument that seems to bolster the case of opponents of voluntary euthanasia. The argument derives from an interpretation of Thomas Jefferson's famous words that all men "are endowed by their Creator with certain unalienable Rights, that among these are Life" and from similar passages in the writings of other founding fathers. To kill another person even with his consent or at his considered request, it might well be claimed, is to infringe his "Right to Life," a right the founders clearly held to be incapable of being waived or surrendered. Willfully to take one's own life or to permit another to take one's life, the argument continues, is in the relevant sense to *alienate* one's right to go on living; hence, suicide and voluntary euthanasia can both be viewed as efforts to alienate the inalienable, to give away what cannot properly be given away.

There is at least a superficial plausibility in this effort to invoke the authority of Jefferson as a basis for refusing legal sanction or denying moral legitimacy to such practices as suicide, aiding another's suicide, and voluntary euthanasia. The argument seems to present a dilemma for those of us who would defend a "right to die": either we must abandon our defense of what seem to us to be morally justifiable practices, or else we must reject the exalted eighteenth-century doctrine of inalienable rights, at least as it applies to the right to life. The former alternative seems inhumane and paternalistic, the latter seems virtually un-American. I have my doubts about the theory of inalienable rights in any case —doubts that will emerge in the following discussion — but my primary intention in this essay is to find a way between two alternatives by reconciling a right to die with the inalienability of the right to live, properly interpreted.

I. THE RIGHT TO LIFE

Just what kind of right is “the right to life”? Numerous distinctions can be made, of course, among the many types and categories of rights. While it is impossible here to work our way completely through the conceptual maze, it will be useful to clarify the right to life by placing it in relation to some of the more important of these distinctions. This will be in part a matter of stipulation, for the right to life is interpreted in different ways by different writers, and where there is disagreement or confusion, I can only try to make persuasive suggestions that one or another interpretation is more standard, useful, or important.

I propose, first of all, to interpret “the right to life” in a relatively narrow way, so that it refers to “the right not to be killed” and “the right to be rescued from impending death,” but not to the broader conception, favored by many manifesto writers, of a “right to live decently.” To be sure, as Hugo Bedau put it, “. . . the life to which we now think men are entitled as of right is not [merely] a right at the barest level sufficient to stave off an untimely death; rather it is a life sufficient for self-respect, relief from needless drudgery, and opportunity for the release of productive energy.”¹ However, we can refer separately to the components of a right to live decently: a right to decent working conditions, a right to food, to clothing, to housing, to education, and so on. Another component right in this comprehensive package of rights is the right not to be killed or allowed to die. *This* is the right that is characteristically at issue in debates over euthanasia and suicide, not the various welfare rights enumerated in twentieth-century manifestoes. It would ill serve clarity, therefore, to use the generic label when we are concerned only with the specific subspecies.

The right to life, in the second place, is generally thought, at least in our time, to be a *claim-right* as opposed to a right in the

¹ Hugo Bedau, “The Right to Life,” *The Monist* 52 (1968) : 567

sense of mere liberty, privilege, or absence of duty to refrain. A claim-right is a more complex notion, and presumably a more valuable benefit, than a liberty. To say that John Doe is at liberty to do or have *X* is to say simply that he has no duty to refrain from or relinquish *X*. But that is not yet to say anything about anyone else's duties to Doe in respect to *X*. Doe may have a right (in the sense of liberty) to *X* even though everyone else is also at liberty to interfere with his efforts to do or possess *X*. If Doe's right to *X*, however, is a claim-right, then Doe is at liberty to do or have *X*, and his liberty is the ground of other people's duties either to grant him *X* or not to interfere with his doing or possessing *X*. A claim-right, then, is a liberty correlated with another person's duty (or *all* other persons' duties) not to interfere. If Doe has a claim-right to life, then those against whom he has the claim (presumably all the rest of us) have duties not to kill him or let him die when we can save him with no danger to ourselves. If, on the other hand, Doe's right to life were a mere liberty, it would amount to no more than the absence of a duty to kill or to fail to save himself, an absence that is perfectly consistent with the liberties and even the duties of others to kill him.

Even a "liberty-right" to life, while not as comfortable a protection as a claim-right, has some importance. Indeed, Thomas Hobbes interpreted the right to defend one's life as a "natural liberty," and made it the foundation of his political philosophy. In a state of nature there are no duties, hence everyone has complete liberty. The natural liberty to defend one's own life (that is, the absence of a duty to cooperate in one's own extinction) is so very important to everyone's natural interest and basic motivation, Hobbes thought, that no one in his right mind would ever agree to bargain it away in the negotiations that lead to the creation of civil society with its complex of new duties and claim-rights. Indeed, the strengthening of personal security is the essence of civil society, the "name of its game." Not even a prisoner convicted of a capital crime acquires a duty to cooperate with his

executioner, though of course the latter will have the liberty, the duty, and the power to execute him in the name of the state.² The Hobbesian “natural liberty” guarantees that one can never have the duty to die; the “right to life” in the sense here being explained, in contrast, guarantees that (under normal conditions at least) others cannot be at liberty to kill you.

To have a right, then, is to have a claim against others, and claims can be further distinguished in terms of their *addressees*. The right to life, as we shall understand it here, is a *double-barreled* claim, addressed to two distinct sets of claimees. On the one hand, it is a right *in rem* holding against the “world at large,” or all other private individuals or groups that might ever be in a position to kill or fail to save the claimant. On the other hand, it is (or ought to be) a claim that its possessor can make against the state for its legal enforcement. The former set of claims, being based on reasons derived from moral principles, are binding on the consciences of other persons and are the grounds of their duties to rescue or to forbear killing the claimant. As such, these claims can exist prior to or independently of their recognition by the state. Hence, they are, in the appropriate sense, *moral rights*. When they are recognized by the state they acquire support from reasons of an additional kind derived from legal rules and thus become legal claim-rights against one’s fellow citizens, as well as moral rights. *Enforcement-claims* — which can have both a moral and a legal backing — obligate the state to require performance of the moral obligations that others have to me and to protect me by threat of punishment from wrongful interference. Valid laws often impose genuine obligations on the state (to refund excess tax payments, to provide trial by jury, to punish crimes, for example) and hence confer correlative rights of a legal kind on citizens as against

² Stephen Becker’s highly philosophical novel, *A Covenant with Death* (New York: Atheneum, 1965), tells of a relevant dilemma. A judge must decide the fate of a prisoner, wrongly convicted of murder, who kills the hangman lawfully attempting his execution. The judge decides to follow Hobbes and declares the prisoner not guilty of any crime.

the state. My (moral) right to life, however, would constitute a morally binding claim to enforcement against the state even in the fancifully hypothetical circumstance in which there were no laws against homicide. I would in that case have a powerful claim against the legislature to *make* laws against homicide so that the moral right to life would be converted into a legal right as well. In actual, prevailing circumstances, I have a moral (but not legal) claim-right against the Congress not to be victimized by the passage into law of invidious, though constitutional, legislation.

The right to life, as I shall understand it here, also belongs to that subclass of moral rights that are said, in virtue of their fundamentally important, indeed essential, connection with human well-being, to belong equally and unconditionally to all human beings, simply in virtue of their being human. It is, therefore, what the United Nations called a *human right*.³ There is a controversy among philosophers whether all, or even any, human rights are *absolute rights*. That dispute is far too complicated to resolve here, but it will be useful to show in a sketchy way its bearing on the concept of a right to life. An absolute right (if there is such a thing) is a right that would remain in one's possession, fully effective as a ground for other people's duties to one, in all possible circumstances. If my right to *X* is absolute, then there are no circumstances in which it is "subject to legitimate limitation" or in which the correlated duties of others to me in respect to *X* are suspended. If the right is absolute, then I possess it, and others are bound to me in the appropriate ways in all circumstances *without exception*. This unqualified and exceptionless character of an absolute right implies (among other things) that it can never be in unresolved conflict with the absolute rights of other persons, whether those rights are of the same type (for example, rights to life) or of another type (say, rights to liberty or to property). If my right to life is absolute in this sense, and if my life can be

³ UNESCO, *Human Rights: A Symposium* (London and New York: Allan Wingate, 1949).

saved only at the cost of taking your property, then your right to property cannot also be an absolute right, for it will be limited or suspended in this case of unavoidable conflict. In short, if conflicts occur between one person's absolute right and another person's right of another kind, the absolute right must always triumph. But it also follows that unavoidable conflict between one person's absolute right and another person's absolute right of the same type (for example, the right to life of two different persons) is logically impossible in just the manner of a hypothetical conflict between an irresistible force and an immovable object. It simply cannot happen.

Since conflicts between rights do occur, it is implausible to maintain that *all* rights are absolute in the present sense. A more difficult question, indeed, is whether *any* rights at all can so qualify. In any event, it seems very doubtful that the right to life, as it is normally understood, can be absolute. A great many people who profess a belief in the right to life also support the killing of enemy combatants in war, capital punishment of convicted murderers, and killing of assailants and even "innocent aggressors" in self-defense. These people find no conflict in maintaining that everyone has a right not to be killed ("the right to life") while holding also that there are circumstances which limit the application of that right and require its suspension. The "right to life" that they believe in, therefore, cannot be absolute.

Nevertheless, it is hard to shed the intuitive conviction that there is somehow *something* that is "absolute" in the natural or human right to life (and the rights to liberty and property too, for that matter). There are at least three strategies that have governed the efforts of philosophers to isolate, specify, and strengthen that lingering intuition. Any one of the strategies would, if successful, be sufficient, but in theory they might also be used in various combinations. The first of these is the *method of presumptiveness*. One might conclude, with William Frankena, that certain human

rights, including the right to life, are only prima facie rights.⁴ That is, in every possible circumstance a person's right to life will be an actual right, commanding forbearance or performance from others, *except* where it is in unavoidable conflict with someone else's right to life (or to something else) which happens to be more stringent in the circumstances. In that unhappy situation the other party's actual right prevails and the presumption that one has one's normal right to life in *that situation*, as one does in most others, is overridden. But the presumptive right to life, as a presumption, always holds. It is the prima facie right that is absolute, not the actual right which may not be present in a rare instance of conflict. To declare that all persons have absolute prima facie rights to life and other goods is "to say that interfering with [their] enjoyment of them always requires a moral justification."⁵ There is *always* a presumption of the existence of the actual right, even though that presumption is not necessarily decisive in every possible situation. At least something, therefore, is constant and invariant in all circumstances.

This position may be expressed more clearly by employing the distinction between having a right and having a claim. To have a claim is to have reasons of some weight that put one in a position to make claim to something.⁶ These reasons support the claim and lend it credence and cogency, even if, in the end, they should fail to *establish* the claim and compel its recognition. Unlike rights, claims can differ in degree: some are stronger than others. One very good kind of reason for denying that John Doe's admitted claim to *X* amounts to a right to *X* in the present circumstances is that Richard Roe also has a claim to *X*, and it is impossible for both Doe and Roe to do or have *X*. In that case,

⁴ W. K. Frankena, "Natural and Inalienable Rights," *Philosophical Review* 64 (1955).

⁵ *Ibid.*, p. 228.

⁶ I have discussed this in my *Social Philosophy* (Englewood Cliffs, N.J.: Prentice-Hall, 1973), p. 68.

Roe (at most) has the right to X; nevertheless, it remains true that even in the circumstances that obtained, Doe did have a strong, but not decisive, *claim*. Using this terminology, a philosopher could affirm that *all persons always* have a powerful claim not to be killed even in those tragic circumstances where it is outweighed by a more powerful claim on the other side. If a judge or moral critic concedes the existence of the powerful claim while denying that it amounts to an actual right in the present circumstances, he thereby assumes the burden of showing how it is outweighed and overridden in the circumstances that prevail. Again *something* remains “absolute” and constant, namely the existence of the claim.

The second strategy for preserving an absolute element can be called, following Judith Thomson, the *method of full factual specification*.⁷ A philosopher friendly to the idea of absolute human rights might argue that all simple and brief statements of (say) the right to life are of necessity mere abbreviations for an elaborately complex statement defining a right that *is* absolute. The fuller statement would begin, presumably, by stating that all “human beings” (a phrase itself in need of detailed definition) have a right not to be killed. It would then proceed to explain what is to be understood by “killing” and which circumstances — described in a general, but not *too* general, way — constitute exceptions (this could lead to a discussion of war, capital punishment, and self-defense, among other topics). The statement would include a discussion of what priority rules are to be used for determining who has the right and who does not in situations of unavoidable conflict; again, these rules would be described in a general, but not too general, way. A similarly detailed statement would follow, describing the full extent, within carefully circumscribed limits, of the right to be rescued. Clearly such an enter-

⁷ Judith J. Thomson, *Self-defense and Rights*, The Lindley Lecture, University of Kansas, 1976.

prise would yield a book-length statement at the very least. Philosophers who prefer the method of presumptiveness are pessimistic about the plausibility of doing this, even in principle, and defenders of the method of full factual specification would have to admit that it has not yet been done in fact.

A more difficult problem comes from the inevitable loss of any semblance of Jefferson's self-evident truths in such a statement. Most of us would affirm without hesitation our belief in a human right to life, but any fully specified statement of that right, including the *correct* one (assuming that there is in principle *one* correct one), would divide us into a hundred quarreling sects disputing such questions as abortion, capital punishment, and the like. It is doubtful that *any* fully specified declaration of a right to life could ever win the unanimous assent of all those who believe that the existence of such a right is obvious. What is self-evident, according to this second view of the matter, can only be a bare "lowest common denominator" of a large number of contending moral systems, perhaps no more than what I have called, with deliberate vagueness, "an ideal directive to legislative aspiration commanding us to do our best for the cause of human life as we judge the various claims that may be before us in our roles as legislators, judges, and moral agents."⁸ Or perhaps the common ground includes more precise and significant areas. Common to the moral systems of all who profess belief in a human right to life, after all, are such judgments as: it is always wrong to shoot a normal adult human being in the back of the head for the purpose of taking his money to buy luxuries for one's own enjoyment. When we include some of the circumstances in the description of the act, we can say that the right not to be the victim of such an action holds "in all possible circumstances." Beyond such examples, the method of full factual specification permits us to say that other human rights, fully specified, are absolute, but only at the

⁸ Feinberg, *Social Philosophy*, p. 71.

cost of admitting that we do not really know, and cannot agree, which rights exactly these are.

The third strategy, which I shall call the method of *justified infringement*, can coexist with either of the other two. No matter how we separate out actual rights from prima facie or presumptive rights, rights from claims, abbreviated statements of rights that are unqualified and thus not absolute from fully expanded statements of rights that are exceptionless, we must face the possibility that some quite actual rights that are possessed by their owners in all situations can nevertheless be rightly infringed in certain unusual circumstances. As Bedau puts it, "A person's possessing a right is not always dispositive of the issue of how he ought to be treated."⁹ If it can make sense to speak of the justified invasion of a genuine actual right, a "justified injustice" as it were, then it will be possible to speak of the proper infringement of an absolute right (that is, a right which is held by its possessor in all circumstances). In that case, the doctrine of absolute rights can be preserved even in the face of convincing examples of justified treatment contrary to what the right, considered alone, would require. Absolute rights, of course, are claim-rights and therefore logically correlated with the *duties* of other people to perform or forbear as the right, considered alone, requires. Thus a logical consequence of the view that sometimes one may justifiably infringe another's right is the proposition that on occasion one may justifiably fail to discharge one's duty.

At this point, it will be useful to borrow Judith Thomson's distinction between infringing and violating a person's right: ". . . we *violate* his right if and only if we do not merely infringe it, but more, are acting wrongly, unjustly, in doing so. Now the view that rights are 'absolute' in the sense I have in mind is the view that every infringing of a right is a violating of a right."¹⁰

⁹ Bedau, "The Right to Life," p. 569.

¹⁰ Thomson, *Self-defense and Rights*.

We can readily provide examples of rights that are *not* absolute in Thomson's sense. Perhaps the most plausible of these are property rights. Suppose that you are on a back-packing trip in the high mountain country when an unanticipated blizzard strikes the area with such ferocity that your life is imperiled. Fortunately, you stumble onto an unoccupied cabin, locked and boarded up for the winter, clearly somebody else's private property. You smash in a window, enter, and huddle in a corner for three days until the storm abates. During this period you help yourself to your unknown benefactor's food supply and burn his wooden furniture in the fireplace to keep warm. Surely you are justified in doing all these things, and yet you have infringed the clear rights of another person.

It will be argued, on the other side, that you have not infringed anyone's actual rights that were fully operative in the circumstances, but only *prima facie* rights, the overturned presumption of rights, or inconclusive claims. It will be said, perhaps, that the undeniable right of the homeowner, when fully specified, excludes emergency circumstances such as the ones that obtained, and thus he can have no grievance or counterclaim against you. It is, of course, possible to *say* these things, but only at the cost of rejecting the way most of us actually understand the rights in question. We would not think it inappropriate to express our gratitude to the homeowner, after the fact, and our regrets for the damage we have inflicted on his property. More importantly, almost everyone would agree that you owe *compensation* to the homeowner for the depletion of his larder, the breaking of his window, and the destruction of his furniture. One owes compensation here for the same reason one must repay a debt or return what one has borrowed. If the other had no right that was infringed in the first place, one could hardly have a duty to compensate him. Perhaps he would be an appropriate object of your sympathy or patronage or charity, but those are quite different from compensation. This is a case, then, of the infringement but not the violation of a property right.

Not every case of justified killing infringes the victim's right to life. We may still have to resort to the presumptiveness strategy or the full specification strategy to explain why we do not infringe the victim's right to life in war killing, capital punishment, or self-defense. The other's right to life may not extend as far as these cases of justified killing and hence may not be involved at all. Surely, we acknowledge no duty of compensation to the heirs of an aggressor whom we killed in self-defense. On the other hand, there are some rare cases, as Thomson points out, of justified killing of innocents whose rights to life *are* thereby infringed—"If you are an innocent threat to my life (you threaten it through no fault of your own), and I can save my life only by killing you, and therefore do kill you, I think I do owe compensation, for I take your life to save mine."¹¹ One of Thomson's examples of an innocent threat is an "innocent shield," a child tied to the front of a tank driven by a malevolent aggressor whose intent is clearly to destroy me. There is no place for me to hide, but I happen to have an antitank gun, so to save my own life I blow up the tank, killing both the wicked aggressor and the innocent child. Self-defense presumably justifies me, and I have no duty afterwards to compensate the aggressor, but the child's right has been infringed, and I would have a strong obligation to set things straight somehow with her parents. In her case, I have infringed a right to life without violating it, so her right to life was not "absolute" in Thomson's sense, but the example does not show that her right was not absolute in our original sense, for the right continued to exist even in the circumstance where it was justifiably infringed. The "absolute" element in the *aggressor's* general right to life, however, if there is such a thing at all, must be demonstrated by one of the first two methods.

We may now tentatively conclude that by "the right to life" we can mean I right not to be killed or allowed to die which can

¹¹ Ibid.

be claimed against all other private individuals and groups for their forbearance and performance, and against the state for its enforcement. As a claim-right it signifies not merely the absence of a duty to cooperate in one's own death, but also the correlative duties of others toward one. It is a moral right in the sense that it is a claim rendered valid by reasons derived from moral principle, and therefore can exist prior to and independently of legal recognition. It is presumably a human right since it is thought to be possessed equally by all human beings simply in virtue of their being human. Put simply and unqualifiedly as the right not to be killed or allowed to die, it is generally thought *not* to be an absolute right, since there are circumstances in which some human beings — soldiers, convicted murderers, homicidal aggressors — seem to be without it. Many philosophers, however, have tried by one method or another to isolate something that subsists through all the circumstances in which a human being with a right to life might find himself. Some locate the invariant element in a standing presumption of a right (a “prima facie right”) or a constant but rebuttable claim to life. Others interpret the right to life in the bare minimal formulation given here as a mere abbreviation for a complex statement full of conditions and exceptions that does define an absolute right. Still others point out that in difficult circumstances some very basic rights can be infringed without being violated, and while this shows that they are not “absolute” in one sense (Thomson's), it is a way of showing the persistence of the right in some situations that might otherwise be thought to be inconsistent with its absoluteness in our present sense of context-invariance.

II. DISCRETIONARY AND MANDATORY RIGHTS

Up to this point the defining characteristics I have attributed to the right to life are either commonplace and uncontroversial or else technical and controverted only by abstract theorists. Now we come to a question about the right to life that is both controversial

and directly relevant to our ulterior purposes. We must now ask how the distinction between “discretionary” and “mandatory” rights applies to the right to life. This is a familiar distinction which has borne a number of other names. Martin Golding has formulated it as well as any, using the terms “option-right” and “welfare-right.”¹² A discretionary right, which Golding calls an option-right, is “an area of autonomy within which the right-holder alone is free to decide.”¹³ I have a discretionary right in respect to *X* when I have an *open option* to *X* or not to *X* correlated with the duties of others not to interfere with my choice. It is important to note that if I have a discretionary right to do *X*, it follows logically that I have a right also not to do *X*, if I should so choose. It cannot be the case that my right leaves me free to *X* but not free not to *X*. Any discretionary right to something is a right to take it or leave it, as one chooses. A mandatory right, in contrast, confers no discretion whatever on its possessor: only one way of exercising it is permitted. It leaves one path open to him but no genuine “option” between paths. It imposes a correlative duty on others to provide that path and leave it unobstructed, but it imposes no duty upon others of noninterference with deviance from the single permitted track. If I have a mandatory right to do *X* then it follows logically that I have, not a right not to do *X*, but rather a *duty* to do *X*. In the case of mandatory rights, duty and right are entirely coincident.

Golding cites the right to education as his chief example of a mandatory right. All children in a certain age group have a right to attend a school and receive instruction from teachers in it. At the same time, those children, since school attendance is required,

¹² Martin P. Golding, “Towards a Theory of Human Rights,” *The Monist* 52 (1968). I have no quarrel with the label “option-right” and shall use it as an alternative way of referring to discretionary rights, but I find “welfare-rights” a misleading and even question-begging term insofar as it suggests that all of the rights we naturally associate with “welfare” — such as the right to a job, to medical care, to education — are necessarily what I call “mandatory rights.”

¹³ *Ibid.*, p. 546.

have a *duty* to attend school. The right and duty coincide; there is no free play for “discretion”; therefore, the right is mandatory.

Very likely there is no gainsaying Golding on his account of the right to education, but to those who find the very idea of a mandatory right intolerably paradoxical there is one possible way out. That is to interpret the right as a claim that each citizen has to live in an educated society. On this construction, each person has a right that all the *other* persons be educated, and in virtue of the right that the others have that *he* be educated, he has himself a duty to attend school. It is because of other people’s rights that he has a duty to go to school, not because of his own. If he has no discretion in the matter, that is because the discretion theoretically lies with the others to release him or hold him to his duty. This is a perfectly coherent account of something to which “the right to education” might refer and, so interpreted, the right to education is not quite the same thing as a mandatory right. The only trouble with it is that it is not a very accurate account of what most of us mean in ordinary political discourse when we speak of “the right to education.” We ordinarily have in mind, when we use that phrase, a claim that each child can make to his *own* education, not merely, or not only, a claim that he can make to be a member of an educated community.

Still, it is easy to understand why people should be uneasy with the very idea of a mandatory right. The theory behind the idea seems to be that there are certain undeniable benefits, such as education, health, welfare, to which we are all entitled, and that these benefits are so important that it cannot be in anybody’s interest ever to forgo them. Opportunity to enjoy these benefits must be provided by others and not interfered with by others; because the benefits are undeniably advantageous whatever the beneficiary may think about the matter, the latter must not be free to forgo them. The concept of a mandatory right, in short, would seem to be a paternalistic notion, reasonably enough applied to children, but offensively demeaning when imposed on presumably auton-

omous adults. Perhaps that is why Golding's most plausible example of such a right, the right to education, is one thought by most of us to apply (at least in its mandatory aspect) to children only. Another perennial philosophical candidate for such a status is the "right to punishment" conferred by righteous moralizers on qualified wrongdoers in the same condescending spirit as that with which the nurse gives the reluctant child his evil-tasting medicine. ("We know that, unpleasant as it may seem, this treatment is bound to do you more good than harm in the long run. In fact, it is what you *need* if you are to get better, and you must take it if only for your own sake.") The contrast with option-rights, which we are free to exercise as we please, is striking in this respect. The primary benefit conferred by a discretionary right is a certain amount of guaranteed freedom; mandatory rights are guaranteed opportunities to secure goods of other kinds (education, moral regeneration, health) that are paid for by sacrifices of freedom.

The idea of a mandatory right, moreover, brings to mind some frightful sophistries. We recall the odious arguments used throughout history both by revolutionaries and reactionaries that there can be freedom to do good but not to do evil, to speak truth but not falsehood, to worship true but not false gods. "Freedom" to do evil, to speak falsehood, to commit religious error, is not freedom at all, it is said, but mere license. From this, it is but a short step to the view expressed in what Isaiah Berlin calls a typical statement made by a Jacobin club during the Terror: "No man is free in doing evil. To prevent him is to set him free."¹⁴ Then if we guarantee a Jacobin "freedom" by imposing duties of non-interference on others enforced by the state, we have converted it into a "mandatory right."

Still, in all fairness, there is no necessity that any given mandatory right be enmeshed in such specious rhetoric. A mandatory

¹⁴ Sir Isaiah Berlin, *Four Essays on Liberty* (New York: Oxford University Press, 1969), p. 148 n.

right, after all, is a kind of duty looked at in a certain positive way, and there need be nothing sinister in the assignment of duties to people. Every duty trivially entails a liberty to do what duty requires. (A liberty to do *X* being defined as the *absence of a duty not to do X*.) When it is vitally important and essentially advantageous not only to the community in general but to the moral agent himself that his duty be discharged, we are likely to guarantee him, by the imposition of duties of noninterference on others, the opportunity to do his duty. Then the liberty trivially entailed by duty takes on the appearance of a claim-right against others. If the personal and social interest in the successful performance of the duty is great enough, opportunity to perform is guaranteed, opportunity to fail to perform is totally withdrawn, and, at this point, enforceable duty, treasured opportunity, and claim-right all coalesce into mandatory right. (All that is missing to the possessor is freedom.) Many duties are onerous burdens that, no matter how heavy, must be carried and many yield benefits to the bearer that he will surely wish to reap. Whether we describe these hybrids as duties or rights will depend on whether we wish to emphasize their character as hardships or benefits; on whether our aim is to threaten and entreat, or persuade and induce. Hegelian moralists describe the convicted criminal's duty to submit to punishment as a "right to be punished" when they wish to emphasize that punishment can provide the criminal with a unique opportunity for moral regeneration, a state of being that would be truly beneficial to him, whether he knows it now or not.

However, we do not have to think of duties that are hidden or of benefits that are unsuspected to appreciate the present point. Many of the most ordinary and often irksome political duties are easily conceived, without paradox, as genuine benefits; they are ardently pursued and demanded as rights by those who are not permitted to qualify for them. In Tolstoy's *Anna Karenina*, a group of country gentry discussing women's liberation come to an appreciation of the point quite naturally:

Alexey Alexandrovitch expressed the idea that the education of women is apt to be confounded with the emancipation of women, and it is only so that it can be considered dangerous.

“I consider, on the contrary, that the two questions are inseparably connected together,” said Pestov; “it is a vicious circle. Woman is deprived of rights from lack of education, and the lack of education results from the absence of rights. We must not forget that the subjection of women is so complete, and dates from such ages back that we are often unwilling to recognize the gulf that separates them from us,” said he.

“You said rights,” said Sergey Ivanovitch, waiting till Pestov had finished, “meaning the right of sitting on juries, of voting, of presiding at official meetings, the right of entering the civil service, of sitting in parliament . . .”

“Undoubtedly.”

“But if women, as a rare exception, can occupy such positions, it seems to me you are wrong in using the expression ‘rights’. It would be more correct to say ‘duties’. Every man will agree that in doing the job of a juryman, a witness, a telegraph clerk, we feel we are performing duties. And therefore it would be correct to say that women are seeking duties, and quite legitimately. And one can but sympathize with this desire to assist in the general labor of man.”

“Quite so,” said Alexey Alexandrovitch. “The question, I imagine, is simply whether they are fitted for such duties.”¹⁵

Jury service, whether in czarist Russia or in the United States, can be quite intelligibly described both as a duty *and* as a right, though it is more likely to be described as the former by a harassed and annoyed citizen grudgingly performing the service, and as the latter by the victim of discrimination who is excluded from the process. The same can be said for many other irksome chores in the “general labor of man.”

Indeed any duty can be thought of also as a right. As we have seen, the statement of a duty trivially entails the statement of a “liberty,” not a liberty in the usual sense that implies a choice

¹⁵ Leo Tolstoy, *Anna Karenina* (New York: Dodd, 1966), part 4, chapter 10.

but a liberty only in the sense made familiar by the jurisprudence textbooks, namely that of “no duty not to.”¹⁶ “Jones must do *X*” entails that “Jones may do *X*,” and if Jones is to be guaranteed an opportunity to do what he must and may do, then others must not prevent him from doing it. If doing his duty happens also to be something from which Jones himself will benefit and Jones wants very much to do it, he will view his “liberty” or “permission” to do it, together with his guaranteed opportunity to do it, as goods that he can *claim* from others, and/or the state. Its character as claim is precisely what his liberty shares with the more customary (discretionary) rights and warrants his use of the term “right” in claiming it.

We have a choice between two ways of viewing the right to life, and whichever way we choose will have profound normative consequences. On the one hand, we can think of the right to life as a discretionary right analogous to many of the rights we have in the categories of liberty and property. My right to freedom of movement, for example, entitles me to travel where I wish or not to travel at all. It’s entirely up to me. I have a right to go to Boston, but I can happily *wave* that right and go to Chicago, or I can stay at home if I prefer. When it comes to such general questions of my movement, I am the boss, or as Golding says, I reign sovereign over these aspects of my life.¹⁷ Similarly, I have a right to all the money in my wallet and in my bank account. To say that it is *mine* or belongs to me is precisely to say that I can do with it as I please: spend it on food or clothing or amusement, or not spend it at all, or simply give it away. I have a right, of course,

¹⁶ The textbook sense of “liberty” (derived from Hohfeld) would be less misleadingly called a “half-liberty.” In ordinary speech, to be at liberty to do *X* is to have no duty in respect to *X*, that is (a) to be free of the duty not to do *X*, and (b) to be free of the duty to do *X*. To be free of a duty not to do *X* is to have only a half-liberty with respect to *X* if one should at the same time have a duty to do *X*. One is deprived, in that case, of the other “half-liberty” that would add up to full liberty, or discretion to decide whether to do *X* or not.

¹⁷ Golding, “Towards a Theory of Human Rights,” p. 547.

to keep it, but that is a right I cheerfully *waive* when I donate it instead to a charity. On this model, my life, too, is mine; it belongs to me; I am sovereign over it; in respect to living or dying insofar as that rests within my power, I am the boss. I have a right, of course, to stay alive as long as I can, but I can *waive* that right, if I honestly and voluntarily choose to do so, and choose to die instead.

Alternatively, we can think of the right to life as a mandatory right analogous to the child's right to education, the criminal's right (on the Hegelian view) to punishment, or even the citizen's right to serve on juries. In that case, it can be viewed from one side as primarily a duty, something incumbent on us whatever our wishes about the matter may be. The right to life, so viewed, is a duty to stay alive as long as one can or, at least, a duty not to take one's own life or not to cooperate with others in its taking. Since life is generally an extremely important benefit to a person, indeed a condition of almost all other benefits, it is generally important to him that he be protected in his ability to exercise that duty. That protection takes the form of an enforced claim against all others to their noninterference, and that claim is his right to life seen from another vantage point. But, unlike discretionary rights, it can never be waived, and can be "exercised" in only one way. On this view, even if life is a "gift," it is a gift that cannot ever be declined or given away.

III. THE CONCEPT OF AN INALIENABLE RIGHT

Rights are not mere abstract concepts; they are instruments and devices that can be used by their possessors to *do* things. A full theory of the nature of rights, therefore, would explain how they can be reserved, waived, renounced, transferred, sold; surrendered, forfeited, prescribed (cf. "imprescriptible"); annulled or made void, withdrawn, canceled; overruled, overridden, outbalanced; invaded, infringed, violated; recognized, enforced, vindicated, respected; possessed, enjoyed, exercised, stood upon, acted

on, abused; acquired, inherited, purchased. Indeed some categories of rights are defined in terms of the uses to which they may or may not be put. An inalienable right, for example, is a right that may not be alienated. To understand what a right in this category is or would be, we must first understand what it would be like to alienate a right. On this question there has been a great deal of confusion for two centuries largely because of a failure to distinguish alienating from two other things from the list of things that can be done with rights, namely, forfeiting and annulling, and also a failure to distinguish between two possible interpretations of alienating, namely, waiving and relinquishing. I shall take up these notions in turn.

Alienating vs. Forfeiting

It was an important part of the classic doctrine of natural rights as expounded by Locke and Blackstone that some natural rights, at least (certainly including the right to life), can be forfeited but not alienated. The distinction is roughly that between losing a right through one's fault or error, on the one hand, and voluntarily giving the right away, on the other. To forfeit, says Webster's, is "to lose or lose the right to, by some *error, fault, offense, or crime*; to alienate the right to possess *by some neglect or crime*; to have to pay as forfeit; as, to forfeit an estate by treason; to forfeit reputation" (emphasis added). A forfeitable right, therefore, cannot be an absolute one in our original sense, for it is not possessed unconditionally in all circumstances. Rather it is a right that one must qualify for by meeting certain conditions of proper conduct. As soon as one's conduct falls below the qualifying standards one loses the right, whether one likes it or not. Sometimes the loss is thought to occur instantly and naturally — for example, at the moment a homicidal aggressor puts another's life in jeopardy, his own life is forfeit to his threatened victim; at the moment a murderer kills his victim, he has ipso facto lost his own right to life against the state. In other cases, when the pos-

essor of a forfeitable right misbehaves, he disqualifies himself for continued possession and becomes liable to the annulment of the right at a later time at the pleasure of the state — for example, a negligent motorist may be deprived of his driver's license in a proceeding that occurs a week after his misconduct. Since the forfeited right in all cases was originally understood to be conditional on the possessor's continued proper conduct, it is often said that disqualification is something he has brought upon himself not of course as part of his explicit intention or motive in acting but rather as the predictable and avoidable consequence of his wrongdoing. A forfeited right is not one that has been arbitrarily canceled or withdrawn, nor is it one that has been voluntarily relinquished or transferred. Rather it is thought to be one whose possessor has carelessly, stupidly, or recklessly allowed to get away from him.

In an earlier version of this essay I spoke of a “striking paradox in the traditional view that the right to life can be forfeited (by the condemned murderer where capital punishment is permitted by law) but not voluntarily alienated.” “The would-be suicide,” I wrote, “can lose the right to life he no longer wants only by murdering someone else and thereby forfeiting it.” My earlier view, however, now seems clearly mistaken. If the law treats my right to life as both forfeitable and inalienable, it does not encourage me to kill another person if I find my own right to be “burdensome baggage.” It does of course put me in a “Catch-22” situation, for I can do nothing to bring about the end of my life without committing *some* legal wrong (that is, without violating *someone's* rights), and if my conscience forbids me from committing a legal wrong then I have no choice but to go on living. But if I am determined to end my life in any case, then I am no more “encouraged” to commit murder than to commit suicide, and I will no doubt commit suicide as being quicker, more certain, and involving smaller moral cost.

Alienating vs. Annulling

The major source of confusion in criticisms of the doctrine of inalienable rights over the last century or so might have been obviated, as B. A. Richards suggests, by consulting a good dictionary.¹⁸ Many commentators have assumed uncritically that the founding fathers meant by an “inalienable right” one that could not be canceled or withdrawn by the state. In fact, natural rights theorists tended to use the word “indefeasible” for a right that cannot be taken away from its possessor by others, and most of them, as we have seen, following Richards, explicitly denied that the natural rights with which “all men are endowed by their Creator” are indefeasible in this sense. Webster’s gives two senses of “inalienable” : (1) “indefeasible: incapable of being annulled or made void”; (2) “incapable of being alienated, surrendered, or transferred to another.” Almost certainly, it was the second of these two senses that was intended by the founding fathers. Most eighteenth-century manifestoes and constitutions state or imply that the natural rights they invoke are subject to legitimate limitation. This implication, together with numerous statements in correspondence and philosophical essays that natural rights can be “abridged or modified in their exercise,” strongly suggests that the founding fathers did not think of those rights as “indefeasible.” An inalienable right, in the sense most likely intended by such early American writers as Paine and Jefferson is (in Webster’s words) a right that “one cannot give away or dispose of even if one wishes.” An indefeasible right, in contrast, is a right that “one cannot be deprived of without one’s consent.”

It is, of course, possible to hold that some rights are both inalienable and indefeasible, and perhaps this was the actual view of *some* of the founding fathers. But, putting the question of abridgement and annulment aside, there is no doubt that the dis-

¹⁸ B. A. Richards, “Inalienable Rights: Recent Criticism and Old Doctrine,” *Philosophy and Phenomenological Research* 29 (1969): 398 n.

tinctive and emphatic aspect of the doctrine of inalienability upon which almost all the founders agreed is that an inalienable right cannot be voluntarily given up or given away by its possessor. A very clear and typical statement of this doctrine and its supporting reasons, quoted by Richards, is that of Samuel Adams in “The Rights of Colonists.” He says there that it would be

the greatest absurdity to suppose it in the power of one or any number of men at the entering into society, to renounce their essential natural rights, or the means of preserving those rights when the great end of civil government . . . is for the support, protection, and defence of those very rights: the principal of which . . . are life, liberty, and property. If men through fear, fraud, or mistake, should in terms renounce and give up any essential natural right, the eternal law of reason . . . would absolutely vacate such renunciation; the right to freedom being the gift of God Almighty, it is not in the power of Man to alienate this gift, and voluntarily become a slave.¹⁹

Several arguments are only vaguely suggested in the passage quoted, but there is nothing vague about Adams’ conclusion. Adams finds it irrational for anyone to renounce a natural right and implies that such renunciations must be prompted by “fear, fraud, or mistake,” thereby failing to be wholly voluntary. But even if such a renunciation were somehow made without mistake, fraud, or reason-numbing fear, it would be invalid on the grounds that a “gift” from an all-powerful Creator cannot, in the very nature of things, be refused or relinquished. Whatever we are to make of these arguments, there can be no doubt what conclusion they are meant to support: the *right to life*, like the other natural rights, “cannot be given away or disposed of, even if one wishes.”

Waiving vs. Relinquishing

Failure to distinguish between waiving exercise of a right that one continues to possess and relinquishing one’s very possession of

¹⁹ Quoted by Richards, p. 398 n.

the right can leave the doctrine of inalienability ambiguous and uncertain in its application to the problems of suicide and voluntary euthanasia. What exactly is it that cannot be alienated when one has an inalienable right to X — X itself or the right to X ? If it is X itself that cannot be voluntarily alienated (abandoned, transferred, sold, and so on), then the right to X is a mandatory right, and one has a duty to do X or continue in possession of X . In that case, one is not at liberty to waive his right to X in some circumstances while insisting on it in others, at his discretion. If the right to life is inalienable in this strong sense, then we have a duty to continue to live and forbear suicide that we cannot waive, for it would not merely be our right to life that is inalienable but our life itself. On the other hand, if it is the right which is inalienable, as opposed to that to which it is a right, then it might yet be true that the right in question is a discretionary right (as is my right to move to Chicago or to read Joyce's *Ulysses* or to keep strangers off my land) which I can exercise or decline to exercise as I choose. To *waive* my discretionary right is to exercise my power to release others from correlative duties to me, to desist from claiming my right against them, as when I waive my right to exclusive enjoyment of my land by inviting in a stranger. To be sure, in other cases, such as moving to Chicago or reading *Ulysses*, failure to exercise a right is not called "waiving" it since the obligations of other parties are not affected in the appropriate way. But what is important for our present purposes is what "declining to exercise" and "waiving" have in common, namely the protected discretion to act or not as one chooses. It does not follow from the inalienability of the *right* to life, that I may not decline to exercise it positively or that I cannot waive it (by releasing others from their duties not to kill me or let me die) if I choose. If I decline to exercise the right in a positive way or else waive it, then it is my *life* that I alienate, not my right to life.

It will be useful at this point to illustrate this distinction by using it to generate two possible interpretations of the "inalien-

ability” of the natural rights to property and liberty, as well as to life. Consider first the *right to property*. What would it be like to waive or decline to exercise the right, while keeping possession of it, that is, “reserving” it? One might sell all one’s goods and then give away the money, and live thenceforth by begging. That would be to exercise one’s right to property, interpreted as a discretionary right, in a negative way. So interpreted, one has a right to acquire property or not to acquire it, to “take it or leave it,” as one chooses, just as one has a right to acquire as little or as much as one can. When I give all of my property away, I have not abandoned the discretionary right to acquire (or re-acquire) property; rather I have chosen to exercise that right in a particular, eccentric, way.

It is less clear what would be involved in relinquishing the right to property itself. Here we must imagine a constitutional order and a legal system in which the right to property itself is alienable. Perhaps under such a regime one could formally renounce one’s right to acquire property in a legally binding way, thus relinquishing the right irrevocably (unless the system also provided some legal procedure for re-acquiring renounced rights). If one were thus permitted to relinquish the right permanently, one could possess objects and occupy places but never *own* them. One would be a member of a special lower order of citizenship in that respect, or perhaps a permanent member of a mendicant religious order whose vow of permanent poverty is now enforced by the state at his own original request.

Waiving one’s right to all *liberty* for a period while continuing to possess the discretionary right to liberty is illustrated by a story that is somewhat more fanciful but no less coherent than the parallel story about the right to property. One might lock oneself in a room and throw away the key, having arranged to have one’s food put in through the transom, and one’s garbage hauled out daily until further notice. As a consequence, one would no longer be at liberty to come and go as one pleases except within the

narrow and quite minimal confines of a small cell-like room. If contact with delivery and disposal men is scheduled daily at 9:00 A.M. and one finally decides to terminate the arrangement one morning at 10:00, then one will still have to go twenty-three more hours without one's natural liberty. But, in virtue of one's continued possession of the right to liberty throughout the period during which it is voluntarily waived, liberty itself can be re-acquired in time.

In contrast, if the legal system permitted one to alienate the right to liberty itself, and to do so permanently and irrevocably, then one's future enjoyment of liberty would be sporadic, limited, and entirely subject to the pleasure of other parties. The story illustrating this possibility is that of a person who formally contracts to become the permanent chattel-slave of another, in exchange for some initial "consideration," perhaps one million dollars to be paid in advance to a beneficiary or favorite cause of the contractor. Once he becomes a slave he is no longer free to come and go as *he* chooses, but only as commanded or permitted by his master.

When we turn from property and liberty to life, we discover an apparent asymmetry. Until now, we have been able to distinguish without much difficulty between alienating *X* and alienating the right to *X* and to give plausible illustrations of each. But where *X* stands for life there is an apparent difficulty. In the other cases, I could give up *X*, at least for a time, without relinquishing the right to *X*. I could give away my money, or throw away the key to my locked room without resigning my right to re-acquire property or liberty. But I cannot destroy my life for a period of time while maintaining my discretionary right to re-acquire life whenever I so choose. Thus, an illustration of the waiver or non-exercise of a maintained right to life cannot take the form of a story of a person who deliberately has himself killed. Nevertheless, despite this important difference from the other cases, the distinction between waiving and relinquishing can be applied, albeit

in a distinctive way, to the right to life too.

An illustration of a temporary waiver of the right to life was suggested to me by Don E. Scheid. Imagine a community that has celebrated from time immemorial an annual spring rite. One of the traditional rituals is a kind of sporting contest in which all of the males of a certain age are encouraged, but not required, to participate. All the “players” are armed with knives, clubs, bows, and arrows, and then turned loose in a large forest. For an hour every man is both hunter and prey. For that period of time the normal right to life is suspended for all the voluntary participants. In effect, therefore, each has *waived* the protection of that right for a fixed period of time, with no possibility of repossessing it until the time is up and the game is over. Each player thus releases all of the other players from their normal obligation not to kill him. The object of the game is twofold: to stay alive oneself until the game is over, and to kill as many of the others as one can. This is a fanciful but coherent illustration of a set of rules that confer on everyone a discretionary right to life and also the power to waive that right (thus exercising it negatively) while the right continues to remain in one’s possession.

The example of the formal renunciation and irrevocable relinquishment of the right to life is closely similar to the corresponding cases of permanent abandonment of the rights to property and liberty. Now we must imagine a legal system so permissive that it allows one formally to contract with another, again for a sizable consideration paid to third parties in advance, to put one’s life — one’s continued existence — in the other’s legal power. I consent, in this bizarre example, to the other’s irrevocable right to kill me if or whenever *he* decides to do so. He may have no other legal control over me except that derived from the power of his threat to exercise his right to kill. Technically, I am not his chattel or slave and am at liberty to accumulate property and move about at will, as long, of course, as I stay alive. I *might* stay alive indefinitely, even to the point of my natural death, provided my legiti-

mate killer decides to be benevolent. But if he chooses to exercise his contractual right in another fashion, he may wipe me out, as he may swat a fly or squash a bug, since I have no more claim on his forbearance than does an insect.

The sense in which a right is “waived” in the example of the spring rite is not *very* different from that in which rights are “renounced” in the examples using slavery and a contract to kill. The difference is best understood as one of degree. In the contract examples, the right in question is renounced permanently and irrevocably; the renouncer can never get his right back simply by changing his mind. In the spring-rite example, the right is in effect irrevocably renounced for *a fixed period of time*; no change of mind during that period can restore the right to its original owner. But after the expiration of that interval, the right can be repossessed. “Waiving” a right in a second, weaker but more natural, sense is to give it up provisionally without relinquishing the right to change one’s mind *at any point* and thereby nullify the transaction. “Waiving the right to life” by means of a “living will” would be waiving in this sense. In short, there are two senses of “waiving”; a stronger sense, which is actually short-term renunciation, and a more familiar weak sense in which waiving is inherently revocable. Voluntary euthanasia involves waiving in the latter sense; the spring rite involves waiving in the former; the contract to kill involves permanently irrevocable “waiving,” which is the same thing as unconditional nullification, or renunciation.

IV. A RIGHT TO DIE? THREE VIEWS

How could a person have a right to terminate his own life (by his own hand or the hand of another) if his right to life is inalienable? It would probably be wise here to treat suicide as a special case that should be put aside to enable us to focus more narrowly on voluntary euthanasia. That is because suicide directly raises an additional philosophical perplexity, the puzzle of reflexive moral

relations. If it is conceptually possible to violate one's own right to life by committing suicide, it must be the case that one's right to life is a claim addressed *inter alia* to oneself. In that case, I could have a duty *to myself* not to kill myself from which I cannot release myself — a situation many writers, from Aristotle on, have found incoherent or paradoxical. The paradox is not mitigated simply by thinking of the right to life as a mandatory right. I might well have a mandatory right to life — that is, a *duty* not to kill myself — which is owed to other people. In that case the involved claims are addressed not to myself but to others, claims to provide me with the opportunity to live and not to interfere with my discharge of my duty to live. No paradox arises in that case because no claim is self-addressed. Not all proposed mandatory rights are noncontroversially coherent and intelligible, but only those that are associated with duties which, being owed to others, escape the problem of reflexive moral relations.

Most people in normal circumstances do have a duty not to kill themselves that is derived from the rights of other people who rely or depend on them. That duty can be thought of as a mandatory right because in the circumstances in question, its discharge also happens to be importantly beneficial to the person who possesses it. Moreover, that person can *claim* the associated half-liberties necessary for its exercise. But it is not a paradoxical mandatory right, because its claims are addressed to others (not to interfere), and the duty at its core is owed to others. In these circumstances of interpersonal reliance, one's general right to life, even if it is discretionary and absolute in its own domain, is subject to "territorial" limitation. One's own personal autonomy ends where the rights of others begin, just as national sovereignty comes to a limit at the boundaries of another nation's territory. My life may be my property, but there are limits to the uses to which I can put anything I own, and I may not destroy what is mine if I thereby destroy or seriously harm what does not belong to me. So some suicides may violate the rights of *other* persons,

though equally certainly some suicides do not.

But how could my suicide violate my *own* right to life? Is that right a claim against myself as well as against others? Do I treat myself unjustly if I deliberately end my life for what seem to me the best reasons?²⁰ Am I my own victim in that case? Do I have a moral grievance against myself? Is suicide just another case of murder? Am I really two persons for the purposes of moral judgment, one an evil wrongdoer and the other the wronged victim of the first evil deed? Can one of me be blamed or punished without blaming or punishing the other? Perhaps these questions make the head reel because they raise interestingly novel moral possibilities. On the other hand, their paradoxes may derive, as the predominant philosophical tradition maintains, from the conceptual violence they do to the integrity of the self and the way we understand the concept of a right.

In either case we would be well advised to confine our attention to voluntary euthanasia, and ask whether a person who accedes to an ailing friend's urgent and deliberate request by painlessly killing him or letting him die has violated that person's inalienable right to life. Here at least is a question that is conceptually open and difficult. The distinctions explained above between discretionary and mandatory rights, indefeasible and inalienable rights, and between waiving and relinquishing rights will enable us to formulate three possible positions. It will then be clear, I hope, which of the three can plausibly be attributed to the founding fathers.

²⁰ St. Thomas Aquinas grants the point, on the authority of Aristotle, that nobody can commit an injustice to himself, even by committing suicide. The sinfulness of suicide, according to Aquinas, consists not in the fact that one violates one's own rights (which Aquinas finds incoherent) but rather in that (a) the suicide violates God's rights, just as in killing a slave one violates the rights of the slave's master; (b) the suicide violates his community's rights by depriving it of one of its "parts"; (c) the suicide acts against the *charity* (not the justice) that a person should have towards himself. Aquinas therefore would agree that the suicide, sinful though he may be, does not violate his own "right to life." See *Summa Theologica*, vol. II, Question 64, A5.

The Paternalist

According to the first possible view, the right to life is a non-waivable, *mandatory right*. On this view there is no right to die but only a right to live. Since there is no morally permitted alternative to the one prescribed path, following it is a duty, like the duty of children to attend school and the duty of convicted felons to undergo punishment. But since continued life itself is a benefit in all circumstances, whatever the person whose life it is may think about it, we may with propriety refer to it as a right. In this respect, too, the right to life is similar to the right to education and the right to punishment (as understood by Hegelians). The “right to life” is essentially a duty, but expressible in the language of rights because the derivative claims against others that they save or not kill one are *necessarily* beneficial — goods that one could not rationally forswear. The right therefore must always be “exercised” and can never be “waived.” Anyone who could wish to waive it must simply be ignorant of what is good for him.

The Founding Fathers

The second position differs sharply from the first in that it takes the right to life to be a discretionary, not a mandatory right. In this respect that right is exactly like the most treasured specimens in the “right to liberty” and “right to property” categories. Just as we have rights to come or go as we choose, to read or not read, to speak or not speak, to worship or not worship, to buy, sell, or sit tight, as we please, so we have a right, within the boundaries of our own autonomy, to live or die, as we choose. The right to die is simply the other side of the coin of the right to live. The basic right underlying each is the right to be one’s own master, to dispose of one’s own lot as one chooses, subject of course to the limits imposed by the like rights of others. Just as my right to live imposes a duty on others not to kill me, so my

right to die, which it entails, imposes a duty on others not to prevent me from implementing my choice of death, except for the purpose of determining whether that choice is genuinely voluntary, hence truly mine. When I choose to die by my own hand, I insist upon my claim to the noninterference of others. When I am unable to terminate my own life, I *waive* my right to live in exercising my right to die, which is one and the same thing as releasing at least one other person from his duty not to kill me. In exercising my own choice in these matters, I am not renouncing, abjuring, forswearing, resigning, or relinquishing my right to life; quite the contrary, I am *acting* on that right by exercising it one way or the other. I cannot relinquish or effectively renounce the right, for that would be to alienate what is not properly alienable. To alienate the right would be to abandon my discretion; to waive the right is to exercise that discretion. The right itself, as opposed to that to which I have the right, is inalienable.

The state can properly prohibit such sanguinary frolics as the spring rite described above without annulling the discretionary right to life, just as the state may limit the right to property by levying taxes, or the right to liberty by requiring passports or imposing speed limits. To limit discretion in the public interest is not to cancel it or withdraw it. The spring rite is forbidden, not because our lives are not our own to risk (what is more risky than mountain climbing or car racing?), but rather because: (a) it cannot be in the public interest to permit widespread carnage, to deprive the population of a substantial portion of its most vital youthful members, and leave large numbers of dependent widows and orphans and heartbroken friends and relations; and (b) the "voluntariness" of the participation in such a ritual, like that of the private duel to death, must be suspect, given the pressure of public opinion, the liability to disgrace by nonparticipation, and the perceived inequality of skills among the participants. These are reasons enough for a legal prohibition even in a community that recognizes an indefeasible discretionary right to life (and death).

The Extreme Antipaternalist

The third position springs from a profound and understandable aversion to the smug paternalism of the first view. Like the second view, it interprets the right to life as a discretionary right which we may exercise as we please within the limits imposed by the like rights of others and the public interest. So far, I suspect, Paine, Adams, and Jefferson would be in solid agreement, since the natural rights emphasized in their rhetoric and later incorporated in our Constitution were, for the most part, protected options, and these writers made constant appeal to personal autonomy in their arguments about particular political issues. But this third view goes well beyond anything the fathers contemplated, since it holds that not only is life alienable; the discretionary right to life is alienable too. This view, of course, cannot be reconciled with the explicit affirmations of inalienability made in most of the leading documents of the revolutionary period, thus it cannot be attributed to the founding fathers. But it would be a mistake to dismiss it too quickly, for paternalism is a hard doctrine to compromise with, and this view rejects paternalism *totally*. According to this third view, a free and autonomous person can renounce and relinquish any right, *provided only that his choice is fully informed, well considered, and uncoerced*, that is to say, *fully voluntary*. It may well be, as I have argued elsewhere, that there is no practicable and reliable way of discovering whether a choice to abjure a natural right is fully voluntary.²¹ The evidence of voluntariness which we can acquire may never be sufficiently strong to override the natural presumption that no one in his right mind, fully informed, would sell himself into permanent poverty or slavery or sell his discretionary right to life. On that ground the state might always refuse to sanction requests from citizens that they be permitted to alienate the right to life. But that

²¹ See the discussion in Joel Feinberg, "Legal Paternalism," *Canadian Journal of Philosophy* 1 (1971): 105–24.

ground is quite consistent with the acknowledgment that even the natural right to life is alienable *in principle*, though not in fact. At least such a consistent antipaternalistic strategy would keep us from resorting, like Sam Adams, to the peculiar idea of a “gift” that cannot be declined, given away, or returned, and would enable us to avoid the even more peculiar notion that the right to life of an autonomous person is not properly his own at all, but rather the property of his creator.

Whatever judgment we make of the third position, however, will be consistent with the primary theses of this essay: that the inalienable right to life can be interpreted in such a way that it is not infringed by voluntary euthanasia; that that interpretation (the second position above) is coherent and reasonably plausible; and that it is very likely the account that best renders the actual intentions of Jefferson and the other founding fathers.