

A PHYSICAL DEFINITION OF RIGHTS

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WHAT IS A RIGHT? Despite copious usage, this simple word still lacks an unequivocal definition. Innumerable attempts to capture its elusive meaning have only succeeded in substituting equally vague and imprecise terms.¹ The intent of this paper is to define *rights* in terms of the physical quantities of mass, space, and time, enabling one to determine, with rigor, who caused what to whom and to what degree in human interactions.

ARBITRARY “RIGHTS”

“Rights” is a fundamental concept in both legal and ethical theories. What is *good* for a person obviously has some relation to what his rights are. Usually, a person’s ethical duties are a subset of his more extensive rights. Consequently, developing an ethical theory requires an understanding of rights to assure that none are transgressed.

Similarly, the law is thoroughly dependent upon the concept of rights. The impreciseness of the prevailing definition probably accounts for the inconsistency and murkiness of legal opinions.² Are no-smoking laws in public places just? Does neighbor Smith have the right to smoke in his own house while in a guest’s presence? Does a fetus have rights? Do its rights prevent the woman from aborting it? Does the father have any rights over the fetus?

The questions regarding rights are endless and, evidently, are essential enough to involve the “right to life” itself. That all the aforementioned questions are still heatedly debated evinces the unsatisfactoriness of the current definitions. *Right* has been variously defined as

that which is "in accordance with what is 'good' or 'just' or 'fair'";³ and *good*, *just*, and *fair* are defined as what is "right" or "fair" or "good" or "just."⁴ These definitions are not only circular but highly imprecise.⁵ Consequently, it is not surprising that after a legal education or graduate study in ethics, one is no more prepared to resolve the previous questions than is the legal or philosophical tyro.

Although this paper is intended as an exposition of a new idea and not a critique, a brief look at legal doctrines is in order. The legal approach to resolving rights conflicts is to *balance* the rights. For instance, the law attempts to balance the "rights" of people to smoke and to breathe clean air. Judges draw a line in theoretical space; if this line is trespassed, a right is transgressed. Where the line is drawn is determined by balancing the sociological and utilitarian benefits of each side.⁶ As regards the rights of smokers and nonsmokers, for example, assume the line is drawn between public and private places. (Of course, what distinguishes a public place from a private place requires its own separate line-drawing and balancing test.) So-called public places must provide separate sections for smoking and nonsmoking patrons. In fact, however, many "public places," like airplanes and restaurants, are privately owned. Are the rights of these property owners simply disregarded? No. The balancing of the opposing rights and their corresponding sociological values favors making these property rights subordinate.

Lawyers and other professionals accept this arbitrary line-drawing with equanimity even though this judicial whimsy results in people suffering unredressed injustice. The law never defines *rights* but merely prefixes the term to almost every act or action a person normally may perform: One breathes; therefore, one has the "right" to breathe. One smokes; therefore, one has the "right" to smoke. The exceptions involve religious and cultural taboos whose entrenched niche in the law has never been adequately explained.⁷ Why do murder and prostitution both constitute acts that no one has a "right" to perform?

To eliminate the arbitrariness, *rights* must be defined fundamentally and not "intuitively." We will attempt here to define *rights* in terms of causation, which is translatable into the fundamental physical concepts of mass, space, and time.

CAUSATION

By the most common understanding of the concept "right," one has the right or freedom to act. Generally, the courts find culpability in people who deprive others of this right or freedom to act. From this understanding of "right" as being a freedom to act arises the principle that one has the right to act as long as so acting does not violate another's right to act.

What, however, is an action that violates another's rights? Usually, one who causes or is responsible for harm to another is considered to have violated that person's rights. "Rights," therefore, is related to causation. Since causation is a well-understood, defined, and observable physical phenomenon, we will use it to formulate a definition of *rights*. More precisely, causation will be used to determine guilt and innocence.

Of course, this use of causation is not novel, although using it as the only factor is novel. The law subdivides causation into proximate and actual causation. Actual causation is defined as the causes *in fact* of an event. Whether something or someone is a cause in fact of an event is decided by the laws of physics. Proximate causation is man-made. It serves to delineate arbitrarily which humans-causes are legally held responsible and which are exculpated.⁸

For example, a car driven by Adams bumps into pedestrian Barnes, hurling him into Conrad, a postman. Conrad had been bending over speaking to Dorothy, who was poised spade in hand while gardening. Barnes propels Conrad head-first into Dorothy, who is thereupon thrust onto her spade and fatally stabbed.

Adams is a cause in fact of Dorothy's death. He initiated the chain of events or, in other words, was the driving force for each succeeding mass to interact physically. In legal jargon, Adams is, therefore, an actual cause of Dorothy's death. The question then becomes whether he is legally the cause (i.e., guilty). This falls under the category of proximate causation.

For this example, the question of proximate causation is phrased as: "Is Adam's action a substantial factor in causing Dorothy's death or is it too remote?" Under proximate cause, the lawyer is charged with arguing the social advisability of recognizing Adams as either being or not being the proximate cause of Dorothy's stabbing.⁹

The purpose of the concept of proximate causation is to prevent finding culpable someone who has "innocently" triggered a disastrous event or chain of events. Yet, note the impreciseness and subjectivity of the terms *too remote* and *substantial factor*. Even if the truth of a verdict could be ascertained, how could it be ascertained in this instance? What is a substantial factor? What is too remote? Guilt and innocence (liability and no liability) are determined by individual interpretations of these vague terms.

A more essential question is, Why must Adam's act be a substantial factor in Dorothy's death in order for Adams to be guilty? In other words, why should guilt be determined by a substantial-factor test? Why isn't every actual cause legally liable? The standard answer is that this society simply does not view an act as being sufficient for culpability.¹⁰ It must be accompanied by some blameworthy mental state. The mental state can be one of either intent or reckless indifference—anything to eliminate an individual who unknowingly flips on a light switch and sets off a bomb. Why is a particular mental state

necessary? Why the arbitrary line-drawing to hold mental states of “reckless indifference” blameworthy, and not just those of direct intent?

Our approach also draws a line—at *primary causes*. Simplified, he who *primarily* caused an event is responsible for causing it. Why? And how is it determined who or what is the primary cause?

RIGHTS

The purpose of the term *rights* is to denote the legal boundaries of permissible actions among individuals. When people conflict and seek legal redress, they are seeking a resolution of their respective rights. Specifically, they want to know who is at fault—who violated or is violating the other’s rights. In other words, who caused what to whom?

If a person lived alone on a deserted island, he would never have to concern himself with rights. Of course, he would have them, but it would never be necessary for him to know what they are. Once, however, he begins to interact with others, he must know his rights with accuracy if he is to increase the probability of his disputes being justly resolved. (Since humans are fallible, juries will never always be truthful even if they apply true theories.)

What then is a *cause*? Commonly, we say the object that “moved into” the person or other object is the cause of that interaction. The person or object occupying the space “moved into” has *primacy of action* over that space. We postulate that primacy of action is derivable from the concept of primary causation. Primacy of action is a concept involving space, time, and entities. An entity that occupies a space prior in time to another entity has primacy of action over that space. And between those two entities, the one with primacy of action over the space has the right to it. *Right*, therefore, is defined as primacy of action.

Where do we get the concept of primacy of action? Simply, we postulate that all people and animals possess the sense or idea of causation and the primacy of action. When an animal fights for its territory, it is fighting because of its sense of primacy of action. It occupied, or “believes” it occupied, the territory before any other animals.

Man’s theory of causation demonstrates his idea of the primacy of action. For example, Andy and Alice are brother and sister who prefer the same chair for watching television. Alice grabs the chair first one Monday evening. She leaves it briefly to go to the bathroom and returns to find Andy occupying the chair. She angrily orders him out of the chair, and a fight ensues. Their mother hears them, rushes into the room, and demands to know who caused the fight.

Who *did* cause it? Would we answer, “Alice, because she ordered

Andy out of the chair"? No. We would conclude that Andy caused the fight, since he violated Alice's rights. Alice had primacy of action over the chair for the evening (assuming the primacy of action over the chair is decided anew at the beginning of each evening period). Upon his sitting in the chair, Andy had second primacy of action. He would, therefore, have had a "right" to the chair over everyone else except Alice. When Alice came back to claim the chair, he should have vacated it.

To take another illustration, suppose a person rushes in to defend another person from a third person's attack. This so-called Good Samaritan thinks he is witnessing a victim of a mugging. He jumps in and pummels the assailant—who is, in fact, a policeman making a legitimate arrest. Certainly, this is a more complex example. However, the cause is still determined by the primacy of actions of the persons involved. The "Good Samaritan," if he is not aiding a victim, becomes liable himself for having caused an attack.

PRIMACY OF ACTION

As stated, primacy of action is a concept involving space, time, and entities. *Primacy of action* is defined as "the occupation of a space and time." Consequently, anyone interacting with an entity has primacy of action with that entity. When, as in the previous example, Andy sat in the chair, he had primacy of action with that chair. However, Alice had interacted with the chair prior to Andy, so she had first primacy of action with the chair and Andy had second primacy of action. If Alice again vacated the chair and their mother sat in it, then the mother would have third primacy of action for the chair. In answer to the simple question concerning who had rights to the chair: Alice has first primacy of action, Andy has second primacy of action, and their mother has third primacy of action.

Primacy of action for moving bodies works similarly. A jogger Henry running a circular route over virgin ground has primacy of action for his path. (It makes no difference whether he runs at specific times or not.) Suppose there is another jogger Henrietta, whose circular route encompasses Henry's course. Again, she has primacy of action for the ground she occupies. Henrietta then alters her route to intersect with Henry's at point x . They both begin jogging at 7:00 A.M.; however, Henrietta does not occupy point x until after Henry has passed through it. Henry, of course, has first primacy of action for x , while Henrietta has second primacy of action. Since they do not conflict at point x , there is as yet no problem.

Previous Primacy of Action

When they do conflict, there are two questions to ask regarding primacy of action: Who has previous primacy of action for the space

of the interaction? and, Who has primacy of action for the interaction?

Suppose, for instance, that Henry slows down his jogging pace at his doctor's suggestion. Now he and Henrietta will reach x at the same time. In other words, they have an involuntary interaction at point x . (The consent of the persons interacting is an essential consideration in this theory of justice. Obviously, no conflict arises and nothing need be resolved if each person interacts voluntarily. However, there is a greater significance to each person's consent, and it will only be given a cursory treatment toward the end of this paper.) Henry has primacy of action for x , that is, the space of the interaction between Henry and Henrietta. Primacy of action for the space of the interaction is termed *previous primacy of action*. Henry has previous primacy of action for the space of the interaction (point x) between him and Henrietta.

Assume Henry and Henrietta are running on that particular area for the first time. The mechanics of the interaction, therefore, determine whose primacy of action is violated by whom. The concept involved is imagining a line drawn on the surfaces of Henry and Henrietta at the point and instant of contact. The first person to "cross the line" and occupy a space previously occupied by the other person is the *primary causal* actor of the resulting interaction. In other words, the primary causal actor first "moves into" the other person. Of course, both actors cause the interaction; since without both Henry and Henrietta, no interaction between them could occur. Only one of them, however, can be the *primary* cause.

Suppose Henry is standing at x and Henrietta is running along, eyes fixed on the ground. They interact at x , and neither of them had previous primacy of action for x . Who is the cause of the interaction? Henry was at rest and Henrietta moved into him. Since Henrietta did not have previous primacy of action for point x , she is the primary cause of the interaction.

For a second example, Henry is jogging through point x at a speed slower than Henrietta's when they collide. Again, Henry has his primacy of action violated by Henrietta, since she moved into him. (Of course, each person has first primacy of action over his own body, since he interacts first in time with himself.)

Third, Henry and Henrietta are jogging at equal speeds when they collide at x . In that event, although they both cause the interaction, neither of them is the primary cause.

Assume that Henry has previous primacy of action for x when he and Henrietta interact. In that event, regardless of the mechanics of the interaction, Henrietta is the primary cause. In short, Henry owns point x for the times he chooses to interact with it. The actor without first primacy of action is almost always going to be the primary causal actor and, in other words, the one who primarily results in the involuntary interaction. The mechanics of the interaction do become important in determining whether Henry (the actor with previous primacy of action) has reacted excessively to the primary causal actor.

Exclusion of an Interaction

The person who has first primacy of action with an entity and space has exclusive ownership of that entity and space for the times he chooses to interact with that space and entity. A person's primacy of action is violated not only by a collision (as in the previous example) but also when the owner must move in order to avoid (exclude) a collision (interaction).

A primary resulting action (primary *resultant action*) is an actor's (A's) action that *would have primarily caused* an interaction with an actor (B) except for at least one of the actors' action(s) to exclude that action and its interaction. The action of excluding is defined as *primarily resulting* from A's actions.

For example, Whitston is sitting in his lawn chair underneath his shade tree while sipping a glass of cold lemonade. He has his feet propped up on a wrought-iron table as he balances himself on his chair's back two legs. His son, Whitston Junior, is bowling on their expansive front lawn with a friend. After a brief, laughing consultation with his friend, Junior turns, bowling ball in hand, and pulls back his arm, aiming at Whitston's back chair legs. His aim is perfect, but Whitston Senior sees the ball coming. In attempting to set the chair forward on the ground, he loses balance and falls backward into the tree trunk. He receives a prominent bump on his head.

In this example, Junior's bowling the ball *resulted* in Whitston's bump but did not cause it. His father's own act of losing balance and falling backward into the tree caused his injury.

Resultant actions are a general classification of actions that include causal actions. The action that would have caused an interaction to an actor except for another actor's action(s) to exclude it is a resultant action even if it does cause the interaction.

Suppose Junior had succeeded in bowling over his father's chair. The hurled ball sent Whitston over backwards on his head and into the tree trunk. The thump gave Whitston Senior an egg-shaped swelling on the back of his head. In this case, Junior's bowling the ball caused Senior's fall, and it also resulted in his bump.

Our postulation is that a person (actor) is liable for all his actions that primarily result in the violation of another person's first primacy of action. Since Whitston Senior has first primacy of action over the chair (as given) and the ground on which it stands, Junior violates his primacy of action with his primary resultant actions: (a) he primarily results in Whitston's act to exclude the interaction that otherwise would have occurred or (b) he primarily causes his chair to fall over by hitting it with his bowling ball.

The Nature of the Ownership

This paper is necessarily a brief discussion of the primacy of action. All implications of its application cannot be covered, but a few addi-

tional examples will further illuminate the aspects of the primacy of action already mentioned.

For example, Polar Bear Airlines flies northern air route z every morning at 9:00 A.M., and it flew that route z prior in time to Polar Wind Airlines. Polar Wind Airlines flies route z at 11:00 P.M., and it was the first in time to fly z at that time. If both airlines fly at the times at which they have primacy of action, they do not conflict. However, one morning while starting on course at 9:00 A.M., Polar Bear encounters a Polar Wind jet flying the same air route. Since Polar Bear has first primacy of action for route z at 9:00 A.M., Polar Wind, obviously, is violating Polar Bear's rights.

Similarly, if Polar Bear flies a jet on route z at 11:00 P.M. while Polar Wind is flying, then it is violating Polar Wind's primacy of action. Primacy of action, therefore, allows for nonconflicting ownership by more than one party of the same space but at different times.

Suppose Polar Wind runs a jet along route z at 9:00 A.M., but Polar Bear's morning flight suffers a mishap preventing it from taking off. Has Polar Bear's primacy of action been violated by Polar Wind? Since there has been no interaction between Polar Bear's jets and Polar Wind's jets, there has been no violation of either airline's primacy of action.

For an additional illustration, Mary leaves her house for a two-month vacation. Can burglar Harry then enter that house without violating Mary's primacy of action? If he could do so without interacting with the house or any possession inside it, then he would not be violating Mary's primacy of action. For example, a phantom or ghost, if such existed, might be able to pass through Mary's house without interacting with any of her possessions. In that case, there would be no violation of Mary's primacy of action. Similarly, there is no violation of Polar Bear Airlines' primacy of action in the previous example, since Polar Wind Airlines does not interact with any of its possessions.

Suppose Mary does not return from her vacation in two weeks. In fact, a year passes and she is still away. She ends all her interactions with the house. She pays no bills and asks no one to check on it. Since the house exists in the land of Oz where people are not forced to show gratitude to the state for their possessions, there are no property taxes or taxes of any sort. Mary also has no mortgage on the house, so the bank has no claim to it. One day, a stranger, Max, wanders by, enters the house, thinks it pleasant enough and begins to reside there. Mary never returns, but Mary's heirs claim the house. Max would win, since he has ample evidence that Mary abandoned her house. Suppose, however, Mary returns after twenty years. She claims she did not abandon the house; Max claims she did. Obviously, since she has returned, she did not abandon (cease interacting) with the house. Mary has first primacy of action over the house while Max has at most second primacy of action.

MENTAL STATES

In the scheme presented here, what is the relationship between responsibility and the "criminal's" mental state? Responsibility is not determined and has no relationship to the mental states of the actors involved in the interaction.

Mental states are an inextricable part of today's law. The division of the law into civil and criminal is based on the responsible party's mental state. For example, in his own house which he also maintains, Henry stumbles and falls down a flight of stairs. He smashes into Peter, a visitor, and breaks Peter's leg. Applying the law, since Henry did not intend to break Peter's leg and did not exercise a reckless disregard for Peter, he is only (if at all) civilly liable. In fact, Henry must be found negligent to some minimal degree to even be held civilly liable to Peter.

Why does the law hold that a mental state is integral to civil or criminal liability? Does Peter care whether Henry intended the act? Certainly, Peter's medical bills exist regardless of Henry's intent. The answer given repeatedly by both law professors and legal texts is that common sense so dictates.¹¹ "We feel," they claim, "that a person who through blind chance causes some wrong ought not be held responsible for the act." Peter might not agree. (If he did, however, he would not seek legal redress against Henry.)

Of course, the latter is an example of a relatively minor and reparable injury. Suppose, however, that Henry had instead killed Peter when he fell on him, landing on him with such force that Peter's body was flung onto the concrete floor. Further, Henry's fall was not even the result of negligence. He lost his balance when he stubbed his toe on his stair. Is this the type of person, a law professor might ask, whom we would want to hold responsible for manslaughter? From the obvious facts, Henry is responsible for killing Peter. He physically caused Peter's death by knocking him down. Consequently, since the legal theory presented here disregards mental states, Henry is responsible for manslaughter.

The hypothetical law professor would disagree with this conclusion. He agrees that Henry caused Peter's death. Henry violated Peter's primacy of action by "moving into" Peter's body. Nonetheless, the law professor would deny Henry's responsibility for Peter's death. Why? The law professor wants to carry causation one step further. He wants to find out whether the perpetrator had a mental state that initiated the physical causation chain. Did Henry, for instance, choose to step on the stairs in such a manner as to cause him to stub his toe and lose his balance? Or, if he did not actually choose it, was he nevertheless aware of the step's irregular structure and negligently stepped on the step anyway? The law professor and the existing law do not want to hold guilty the person who is an innocent victim of circumstances. For example, a hunter whose stray high-powered bullet

kills a man inside a building more than a mile away is not held criminally liable.

Under the current legal system, a guilty verdict for a defendant charged with a crime results in the imposition of punishment. The defendant may be either obligated to pay a fine or incarcerated in a prison. In the system of justice herein presented, this is not the consequence of a guilty verdict. The guilty verdict is not an expression of public disapproval or condemnation. The party found responsible has been only resolved by the jury to have taken an action that primarily resulted in, is primarily resulting in, will primarily result in, or would have primarily resulted in an involuntary interaction with the victim. As so adjudicated, the responsible party is obligated to make restitution to the victim.

Briefly, since the involuntary interaction with the victim changes him to an undesired condition, he must be returned to his condition prior to the involuntary interaction (i.e., returned to a voluntary condition). The only action(s) that can be required from the responsible party are actions returning the victim to his prior state. Such actions are called restitution. Restitution of the victim is the ultimate purpose of the judicial system herein, not punishment of the guilty. Neither the logical foundation of the restitutive procedure nor the various intricacies of its application can be detailed in this paper.

A problem with carrying causation to mental states is proving that the mental state was or was not the cause. As yet, there are few facts known about the mind and its mental states.¹² And any particular criminal defendant could probably find ten psychiatrists with respected credentials testifying that he is insane, and the district attorney could find another ten psychiatrists with equally respected credentials asserting that the defendant is sane.

Under the present law, the criminal's mental state is a crucial factor in determining his guilt or innocence. Presumably, if the law were consistent, it would also be relevant in determining the victim's right to self-defense.

For example, a man A is running with a meat axe after another man B. In the first case, A is insane and kills B. A, however, is found innocent by reason of insanity. Next, suppose that B defends himself and kills A. In this instance, the jury also finds B innocent because he justifiably acted in self-defense.

The second variation is that A is sane and kills B. This time A is found guilty since he had the requisite intent. Suppose again that instead B kills A and is acquitted for validly acting to defend himself.

If the law were consistent, then a man should not be acquitted for killing an insane man. Since, in fact, insane A would be found innocent of killing B, B has no right to kill a man who is innocent of committing any wrong. Obviously, the law avoids this ridiculous result by inconsistently recognizing the relevance of criminal's mental states.¹³

Additionally, current legal doctrine countenances a murderer who

kills for no sane reason receiving a lesser sentence than a man who kills that murderer for revenge. Or, analogously, a husband kills his wife upon finding her in another man's bed. A court might conclude that he killed in a fit of passion, which would mitigate his sentence. If, however, that wife's father killed the husband a week later, then he probably would be found to have committed nonmitigable premeditated murder.

In summary, one of the defects with adding mental states to the causal chain is inability to prove them. Psychiatry has not established what evidence or actions must be present to prove that a person is "insane,"¹⁴ "intentional,"¹⁵ or suffered from an "irresistible impulse."¹⁶ Whereas, to prove X caused an involuntary interaction with Y requires showing: (1) the alleged action did primarily result in, is primarily resulting in, will primarily result in, or would have primarily resulted in an involuntary interaction with Y; (2) X is, as alleged, the person who took that action; and (3) Y is the person, as alleged, who had the interaction occur to him without his consent. Note that in his defense, X has the burden of proving the interaction was consented to by Y.

TOPICAL APPLICATION: ABORTION

In debates over abortion, the all-important question is, When does life begin? Even granting the advocates of prohibition of abortion their extreme position that life begins at the moment of conception, abortion is still legal under the system of justice briefly outlined here.

A woman has primacy of action over her body and its interaction with the fetus. To avoid criminality, she cannot take an action that is primarily resulting in, did primarily result in, will primarily result in, or would have primarily resulted in an *interaction* with the fetus that is not consented to by the fetus. She may therefore exclude or terminate her interaction with the fetus. If the fetus is a human life, as assumed here, then the mother may not interact "harmfully" or injure the fetus upon removing it from her uterus.

This removal of the fetus presumably is, for the fetus, an involuntary interaction, and the mother does thereby cause its death. By simply touching the fetus, however, she does not primarily cause its death. Of course, if the mother had the fetus yanked out so abruptly as to sever its head, then the mother would have primarily caused its death. Assuming the fetus is a human being, the actual mechanics of the abortion therefore is important in determining whether the mother does or does not primarily result in the fetus's death.

Analogously, imagine a man Gerald who is senile and entirely dependent on another man, Fred. Without Fred's constant attendance, Gerald would die. Fred and Gerald have no contract. Fred merely started spontaneously to care for Gerald as something to do

while he was unemployed. One day, however, his former boss telephones him with a job offer, and Fred accepts it. Soon after Fred returns to work, Gerald dies.

Is Fred responsible for manslaughter for terminating his life-supporting interactions with Gerald? No. Why not? Fred has not violated Gerald's rights (primacy of action). He did not take an action that primarily resulted in an involuntary interaction with Gerald. Or, in other words, he has not "moved into" Gerald or any of his possessions or excluded Gerald from an interaction with himself or his possessions. Fred has solely removed himself from Gerald's life. Note the importance of the concept of interaction. The exclusion of an interaction is never criminal unless a voluntary agreement (contract) between the actors exists to the contrary. The inclusion of an interaction, however, may be criminal.

Suppose Fred does interact involuntarily with Gerald. On the day Fred received the telephone call from his former boss, he was caring for Gerald in his own apartment. His last interaction with Gerald was driving him home, carrying him inside, and placing him on his couch. Thereafter, Gerald died of neglect. Gerald, in fact, did not want to go home where there was no one to care for him. By carrying him home, did Fred primarily cause his death? Certainly, he did cause it, but he did not *primarily* cause it. Generally, the mere act of touching a person cannot cause that person's death. By contrast, suppose Fred opened the door to Gerald's apartment, tossed Gerald inside, and left. Gerald is thrown against a table and suffers internal injuries from which he later dies. Is Fred now responsible for causing Gerald's death? Yes. His involuntary interaction with Gerald does primarily cause Gerald's death. To repeat, the responsible person is the one who *primarily* results in an involuntary interaction with another.

SUMMARY

Right is defined as "primacy of action." *Primacy of action* is defined as "the occupation of a space and time." It is derived from primary causation, which is a concept we all have a sense of: a cause being that entity or actor which first "moved into" the other object or actor.

Predictably, current law, in fact, does apply the concept of primacy of action to resolve conflicts. It is just as predictable that since "rights" is not defined precisely in the law, the application of the primacy of action is inconsistent and arbitrary. For example, the law rightfully recognizes the violation of a person's primacy of action by extending the unlawful touching in the crime battery to include any objects the person may be sitting on or holding.¹⁷ And, of course, rape, assault, manslaughter, and theft are recognized as criminal acts. On the other hand, many existing laws promote violations of a

person's primacy of action, and the enforcement of these laws inflicts injustice on a massive scale. For example, when a residential complex grows up near a preexisting farm or airport and the homeowners complain of the noise, smell, or appearance, many courts will not acknowledge the farm's or airport's primacy of action.¹⁸ Rather, with a utilitarian justification, they will rule for the residential owners. Obviously, a clear, precise definition of rights is an invaluable aid to earnest judges and jurors whose task now at effecting justice is woefully haphazard.

1. See Henry Campbells Black, *Black's Law Dictionary*, 4th ed. (St. Paul, 1968), pp. 1486 ff.; Robert Nozick, *Anarchy, State, and Utopia* (New York, 1974), p. ix; John Rawls, *A Theory of Justice* (Cambridge, 1973).
2. Black, *Law Dictionary*, pp. 1486 ff.
3. Nozick, *Anarchy, State, and Utopia*, p. ix.
4. Black, *Law Dictionary*, p. 1487.
5. Rawls, *Theory of Justice*, p. 60.
6. *Roe v. Wade* 93 S. Ct. 705 (1973).
7. Rollin M. Perkins, *Criminal Law*, 2d ed. (New York, 1969), p. 393.
8. *Ryan v. New York Central R. Co.* 35 NY 210 (1866).
9. Charles O. Gregory and Harry Kalven, Jr., *Cases and Materials on Torts*, 2d ed. (Boston, 1969), p. 318.
10. *Ibid.*, p. 70.
11. See Perkins, *Criminal Law*, p. 741.
12. See Black, *Law Dictionary*, p. 931.
13. Perkins, *Criminal Law*, p. 995.
14. *Ibid.*, p. 853.
15. Black, *Law Dictionary*, p. 947.
16. Perkins, *Criminal Law*, pp. 868 ff.
17. Gregory and Kalven, *Torts*, p. 914; Perkins, *Criminal Law*, p. 995.
18. Cf. *Goldbatt v. Hempstead*, 369 U.S. 590 (1962).