

Rights Based Moral Theory & Privacy

I. What is a Moral Right?

- A. A Precise Definition: The existence of a right is the existence of a state of affairs in which one person (the right holder) has a claim on another (the duty bearer) for an act or forbearance in the sense that, should the claim be in force or exercised, and the act or forbearance not done, it would moral to use coercive measures to extract the specific performance, or compensation in lieu of it.
- B. A Crude Definition: persons have freewill -- this means that they can set the course and direction of their life -- they are deserving of a deep moral respect -- they are sovereign beings -- this means "hands off".

Rights carve out a moral sphere that, in most circumstances, cannot be crossed -- rights, in many cases stand against maximizing utility in the consequences. Rights allow individuals the 'moral space' to order their lives as they see fit. Respect for individuals demands that you respect their rights (Note this assumes a deontic conception of rights -- see below).

II. Kinds of Rights

- A. Natural rights: rights we have independent of social interaction, outside of contracts etc. For example, rights to life and liberty.
- B. Negative rights: freedom from interference -- limits the actions of others -- creates obligations in others not to interfere, property, life, liberty etc. To say that someone has a (negative) right to property, is to say that others are forbidden (or have moral obligations) to not interfere with the right holder and her property.
- C. Positive rights: rights to something provided by someone -- creates obligations in others to do something, e.g. health care, job, shelter etc. To say that someone has a (positive) right to health care, is to say that others must provide this service -- they must act so that health care is provided.
- D. Consequentialist Based Rights v. Deontic Based Rights
 - 1. Consequentialist Based Rights: Rights for the consequentialist are typically viewed as little rules of thumb -- the following of which gets us all the best consequences. I do not violate your right to life because doing so would not maximize goodness. Note: On this view when violating rights does maximize goodness then we should violate the right.
 - 2. Deontic Based Rights: Deontologists argue that 'rights' stand athwart considerations of value maximization in the consequences. "When a (deontic) right is involved, to hell with the consequences." This does not mean that the consequences are given no weight -- sometimes the consequences (catastrophic moral horror) are so extreme that rights may be violated.
- E. Moral Rights v. Legal Rights

III. How Rights Are Obtained

A. Rights are part of personhood, i.e. you are born with them -- they represent your status as a sovereign moral agent (life, liberty).

1. Problem: but why think this? A right is just a complex set of obligations and duties -- how do you get them? J. Bentham claims that (deontic based) rights are nonsense on stilts -- there is no justification for them. Rights create claims of duty on others; how is it that you come into the world with complex obligations between you and other already intact? Many have claimed that talk of rights is just one way the strong keep the weak oppressed (Marx). How does merely saying "I have rights" justify anything?

B. Rights are the result of contracts: Lawn mowing/Car washing e.g. Suppose that two adults make an agreement in conditions that are fair — e.g. one does not have a gun to the other's head. In this situation each of these individuals has a right that the agreement be kept. This is an obvious example of rights being generated.

1. Problem: contracts are only fair if prior acts of predation and freeloading are forbidden -- the initial bargaining situation must be fair. How do we restrict certain behavior to obtain a fair bargaining position without invoking rights? (i.e. arguing in a real small circle.)

C. Property Rights and Labor Mixing: Locke's Labor Mixing Argument: (more later)

The idea is that by laboring on something you mix something you own (your labor) with something that you do not own, and thereby come to own the object (X) labored on. In conditions of plenty what reason can be given for someone else wanting X -- they must not want the raw material, for there is plenty of this. They must want your labor -- something that is yours.

1. Problem: Why do you get a property right in the whole object and not merely to the value added. In cases like land we can separate the two. If value is subjective then why think adding it is morally relevant -- imagine spray painting a hunk of wood neon pink and pasting silver dots on it -- has value been added?

D. Rights arise from convention: As cultures advance, populations grow, and land becomes scarce, conventions are adopted so that we can all get along.

1. Problem: All kinds of things arise from convention, why think they are correct or should be followed? Suppose we had a convention that required that women be treated as non-persons -- would the mere convention make the practice morally justified?

E. Rights represent maxims that can be universally followed (Kant's Moral Theory): Kant's Categorical Imperative: Act only on that maxim that you can at the same time will to be a universal law. Suppose we test the following maxim:

1. I leave the possessions of other people alone and I do not interfere with them or their property.
2. Everyone should leave other people's stuff alone and not interfere with them or their stuff.
3. Can we imagine a world where this universal law is followed?
4. Can we will that the law be followed, consistently, without self-defeat, and without taking away from our general desire for happiness?

Can we universalize this maxim? If we can, then the law is a justified moral rule and rights have been justified.

- F. Consequentialist Based Rights: Rights are justified because recognizing them maximizes overall social utility. Rights may be viewed as little rules of thumb that have, in the past, allowed us to maximize overall goodness for everyone (rights allow us to all get along and to order our lives as we see fit).
1. Problem: What if we know that violating one of these rules of thumb will, in some specific case, maximize overall utility? What if we could kill one innocent individual to save fifty innocent individuals? Clearly, allowing one to live while fifty die is worse than killing one and saving fifty. If this is correct, then we have a moral obligation to kill the one -- the problem is that this seems wrong.

IV. Justifying Privacy Rights:

- A. What is a Privacy Right?: A right to privacy can be understood as a right to maintain a certain level of control over the inner spheres of personal information. (e.g. glove/scar case) Here I am interested in what is a "private affair" — something that is no one else's business.
- B. Arguments/Reasons Justifying Privacy Rights:
1. Autonomy/Flourishing Argument: Rights to privacy erect a moral boundary that allows individuals the moral space to order their lives as they see fit. Privacy protects us from the prying eyes and ears of governments, corporations, and neighbors. Within the walls of privacy we may experiment with new ways of living that may not be accepted by the majority. Privacy, autonomy, and sovereignty, it would seem come bundled together.
2. Anti-Oppression Argument: Privacy rights stand as a bulwark against governmental oppression and totalitarian regimes. If individuals have rights to control personal information and to limit access to themselves, within certain constraints, then the kinds of oppression that we have witnessed in the twentieth century would be near impossible. Put another way, if oppressive regimes are to consolidate and maintain power, then privacy rights (broadly defined) must be eliminated or severely restricted. If correct, privacy rights would be a core value that limited the forces of oppression.