

# The significance of rights<sup>1</sup>

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## (1) Consequentialism and rights

Counterexamples against consequentialism often rely on the intuition that we have *specific* obligations towards *specific* people. These obligations *cannot* be based on the positive consequences we can expect from satisfying these obligations. Compare the discussed trolley case, the defibrillator example, and Bernhard Williams thought experiments, *etc.*

In short: these examples suggest that people ought to (and ought not to) be treated in certain ways, regardless of the consequences. One effective way of expressing this idea is to say that people have *rights*. These rights cannot be negotiated. We ought to act in ways so that people's rights are maintained and protected. Furthermore, to say that someone has a right is expressing that bringing about a better outcome may not be enough to justify why a right is normatively insignificant.

No doubt, most versions of consequentialism cannot allow for this; unless, of course, one assigns a high ethical value to respecting rights, and bases the ethical assessment of an act onto *how many* rights it helped to uphold and respect.

## (2) The Correlativity of Duties and Rights

A right of one person entails the duty of another person. For example, if I have a right to receive €100 from you, then you have a duty to pay me €100. Rights and duties are thus 'correlative'.

So much is clear. What is not clear is whether if the reverse correlation holds as well, i.e. whether a duty of one person entails the rights of another person. That is, it is unclear that if I have a duty to decrease my personal carbon emissions, then someone else has a right that is infringed upon if I fail to do so.

Let us assume that a duty of one person does not entail the right of another. The correlation thus only goes one way. This shows then that there are two kinds of duties: those that correspond with a particular rights, and those that do not. For example, I might have a duty to help the poor; I should contribute a fraction of my income to an efficient charity organization. But that does not entail that a particular individual has a right towards my charity. No one can demand or require me to be charitable towards her. In not giving to a particular person, I have not wronged someone and have not violated the rights of a particular person.

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<sup>1</sup>This lecture is primarily based on chap. 8 of Sanbu's 'Just Business: Arguments in Business Ethics'.

Other duties, however, are connected with specific individuals. If a student scores as high as possible in an exam, I have a duty to mark his exam with an 'A'; it would be wrong and unfair to give the student a bad mark.

This might be seen as a 'perfect' or 'exceptionless duty', i.e. a duty that could not be outweighed or overridden by other considerations, and that gives the student a legitimate reason and claim to complain if she does not receive an 'A'. The student has a right to an 'A'. In sum, this shows that some duties are based on rights. It is the right of a person that explains why another person has a duty. Yet not all duties are based on rights in this way.

Consequently, to ask if one violates a duty by infringing someone's right, one conveys a conceptual misunderstanding. Part of the meaning to have a right is that it entails a duty. In a world without legal or moral duties, there could also be no rights.

### (3) Taxonomy of rights

Expressed schematically, *a right is a claim to something, against someone, that ought to be recognized as valid*. Let us analyze this statement in detail.

#### (3.1) 'A right is a claim to something'

We never just have 'a right'. Instead, rights are always relational; they are always rights to something. Rights can be 'positive' or 'negative'. A positive right puts someone under a duty to act in a certain way; a 'negative right' puts someone under the obligation to refrain from a certain act. Of course, some rights can be positive and negative at the same time. For example, a 'right to one's own life' is, *inter alia*, a negative right. It puts others under the duty *not* to kill others; 'a right to one's property' puts others under the duty not to steal, *etc.* In general, 'negative rights' give rise to duties to refrain from performing certain acts. A positive right gives rise to a duty to actively perform certain actions. As a positive right, a right to one's own life puts other people under the obligation to help me when my life is endangered. A right to basic education, giving rise to an obligation for others to provide basic education.

#### (3.2) 'A right is a claim against someone'

Rights have correlative duties. If I have a right to something, someone else has a duty to act (if a positive right) or refrain from acting (if a negative right) in some way. Whose duties are they? That is, who owns the duty that arises through my rights? This must be specified or implied by the particular claim that someone is in the possession of a right. Nonetheless, negative rights are likely to give rise to a duty towards *everyone*. That is, a person's negative right to her own life corresponds to literally to billions of duties, since it means that *everyone* is under a duty not to kill the person in question. Positive rights, in contrast, are more likely to apply to particular persons. A student's right to a good grade, for example, gives rise to a duty that governs her teacher.

How do people acquire rights? Some rights seem to be in our possession *innately*, i.e. simply in virtue of being human; they are not conditional on anything else. Other rights we possess in virtue and conditional on *social roles*. Compare the right of a student to receive the grade that corresponds to her achievements. Other rights arise from *contractual* relations. By signing a contract, you may confer a right to claim a good from you; and thus you have an obligation to provide this good to the person you have a contractual relationship with.

### (3.3) 'A right ought to be recognized as valid'

According to *which standard* ought rights to be recognized as valid? To begin, there is, of course, a distinction between *legal* and moral *rights*. Legal rights are claims whose recognition is called for by the *law*. They are rights given and enforced by the law and these rights thus give rise to legal duties. It would be *illegal* not to respect a legal right. However, legal rights are not necessarily moral rights, or *vice versa*. Moral rights are claims whose recognition is required by morality. In fact, it can be the case that moral and legal rights conflict. A *legal* right conferred to me by the state to harm you (i.e. to make you in some respect worse off) may result in your *legal* duty not to obstruct my attempt to harming you. But, surely, I might have no moral right to harm you.

Note, however, that moral rights are often taken as explanation for why there should be a particular *legal* right. For example, my legal rights to vote may be based on a moral right to make a proportionate contribution to the community of which I am a citizen. A reversed argument may also be conceivable. Legal rights may explain the existence of a moral right. This might be the case if one thing that one has a moral duty to fulfill one's legal obligations.

It is usually argued that legal rights differ from moral rights in their 'artificiality'. Legal rights are commonly conceived of as 'man made' or 'constructed'. That is, they are relative to a particular legislative system which itself is relative to a collective decision making process. Compare *legal positivism*. Moral rights are often seen as *natural* rights. They are universal, and apply to all people, and are not derivative of any legal or artificial rights.

### (4) Rights in action: two examples

#### (4.1) Guidant and positive rights to information

Recall that Guidant decided not to communicate the defect of their defibrillators publicly. Their justification for this came from consequentialism. Keeping quiet was saving more lives, they estimated, than disclosing the relevant information. Of course, this harmed (at least some of) those who faced health complications and who would have – if they had known about the defect – replaced the device with a functioning one. However, according to consequentialism, these individuals were not *wronged*. For the harm inflicted upon them was expectedly outweighed by the benefits of keeping quiet. Nevertheless, one way of not accepting this implication is by supposing that that the users of Guidant's device

had a *right* to know about any discovered defects. If such a right was in place, Guidant's secrecy wronged their users and Guidant violated a positive duty.

What could such a right be like, and how could it be defended? If there is such a right, then it presumably has to be some sort of positive right to information – as it corresponds (if the argument works) to a positive duty on Guidant to provide the information in question. Needless to say, it falls on the proponents of such a claim to specify what information the right-holder is morally entitled to. This specification could become very detailed. Nevertheless, a right to one's medical information could be defended as an instance of a basic right to decide what medical treatment one undergoes, which is hard to do without the relevant information. Such right could be based and defended upon the relationship Guidant enters when selling a product to a customer.

#### (4.2) Shareholder primacy as a case of property rights

Recall Friedman's shareholder-primacy view. Roughly, this view argues that managers are under an obligation to maximize profits. One defense of this view – also invoked by Friedman himself – is to point out the 'principal-agent' relationship between managers and shareholders. Shareholders employ managers in order to serve their interests. They entrust managers with their property and bestow them with executive powers. However they do so upon a contractual promise to further their interests. This gives rise to a shareholders right to expect a manager to act in his interest on his behalf. This right creates a corresponding duty for a manager to maximize profits for their shareholders.