

Rights

A person has a *right* when that person is entitled to act in a certain way or is entitled to have others act in a certain way toward him or her.

The "right to work", many argue, is a right that all human beings possess. Such rights, which are called *moral rights* or *human rights*, are based on moral norms and principles that specify that all human beings are permitted or empowered to do something or are entitled to have something done for them. Moral rights, unlike legal rights, are usually thought of as being universal insofar as they are rights that all human beings of every nationality possess to an equal extent simply by virtue of being human beings.

The most important moral rights are rights that *impose prohibitions or requirements* on others and which thereby enable individuals to choose freely whether to pursue certain interests or activities.

Moral rights are tightly correlated with duties. My moral right to worship as I choose, for example, can be defined in terms of the moral duties other people have to not interfere in my chosen form of worship. *Duties, then, are generally the other side of moral rights.* Moral rights impose correlative duties on others, either duties of non-interference or duties of positive performance.

Moral rights provide individuals with autonomy and equality in the free pursuit of their interests. The gains of others do not generally justify interference with a person's pursuit of an interest or an activity when that pursuit is protected by a moral right.

Moral rights provide a basis for justifying one's actions and for invoking the protection or aid of others.

Moral rights express the requirements of morality from the point of view of the *individual* while utilitarianism expresses the requirements of morality from the point of view of *society as a whole*.

Negative And Positive Rights

Negative rights are distinguished by the fact that its members can be defined only in terms of the duties others have to not interfere in certain activities of the person who holds a given right.

Positive rights are all rights that go beyond non-interference to also impose a positive duty of providing people with something when they are unable to provide it for themselves.

Positive rights, as we know them today, were not emphasized until the 20th-century. Positive rights became important in the 20th century when society increasingly took it on itself to provide its members with the necessities of life that they were unable to provide for themselves.

Much of the debate over moral rights has concentrated on whether negative or positive rights should be given priority. "Conservative" writers, have claimed that government efforts should be limited to enforcing negative rights and not expended on providing positive rights. "Liberal" authors hold that positive rights have as strong a claim to being honored as negative rights and that, consequently, government has a duty to provide both.

Contractual rights and duties

If I contract to do something for you, then you are entitled to my performance: you acquire a contractual right to whenever I promise, and I have a contractual duty to perform as I promised.

Contractual rights and duties depend on a publicly accepted system of rules that define the transactions that give rise to those rights and duties.

Contractual rights and duties also provide a basis for the special duties or obligations that people acquire when they accept a position or a role within a legitimate social institution or organization. Married parents, have a special duty to care for the upbringing of their children.

What are the ethical rules governing contracts?

1. Both of the parties to a contract must have full knowledge of the nature of the agreement they are entering.
2. Neither party to a contract must intentionally misrepresent the fact of the contractual situation to the other party.
3. Neither party to the contract must be forced to enter the contract under duress or coercion.
4. The contract must not bind the parties to an immoral act.

A basis for moral rights: Kant

Kant's theory is based on a moral principal that he calls the *categorical imperative* and it requires that everyone should be treated as a free person equal to everyone else.

Kant's first version of the categorical imperative:

An action is morally right for a person in a certain situation if, and only if, the person's reason for carrying out the action is a reason that he or she would be willing to have every person act on, in any similar situation.

There is an obvious similarity between the categorical imperative and so-called "golden rule": "Do unto others as you would have them do unto you."

The first formulation of the categorical imperative, then, incorporates two criteria for determining moral right and wrong: universalizability and reversibility.

Unlike the principal of utilitarianism, Kant's categorical imperative focuses on person's interior motivations and not on the consequences of one's external actions.

The second formulation of Kant's categorical imperative

An action is morally right for a person if, and only if, in performing the action, the person does not use others merely as a means for advancing his or her own interests, but also both respects and develops their capacity to choose freely for themselves.

Kant argues that making fraudulent contracts by deceiving others is wrong and that deliberately refraining from giving others help when they need it is also wrong.

Both formulations come down to the same thing: people are to treat each other as free and equal in the pursuit of their interests.

Kantian Rights

In defense of Kant's two formulations of the categorical imperative. First, human beings have a clear interest in being helped by being provided with the work, food, clothing, housing, and medical care they need to live on when they cannot provide these for themselves. Second, human beings also have a clear interest in being free from injury or fraud and in being free to think, associate, speak, and live privately as they choose.

Problems with Kant

A first problem that critics have traditionally pointed out is the Kant's theory is not precise enough to always be useful. Second, some critics claimed that, although we might be able to agree on the kinds of interests that have the status of moral rights, there is substantial disagreement concerning what the *limits* of each of these rights are and concerning how each of these rights should be balanced against other conflicting rights. Kant's categorical imperative does not tell us how the conflicting rights of these persons should be adjusted to each other: which right should be limited in favor of the other?

The Libertarian objection

Libertarian philosophers go beyond the general presumption that freedom from human constraint is usually good, to claim that such freedom is necessarily good and that all constraints imposed by others are necessarily evil except when needed to prevent the imposition of greater human constraints.

Since granting of freedom to one person necessarily imposes constraints on others, it follows that if constraints require justification, then freedom will also always require justification. This means that we cannot argue in favor of a certain kind of freedom by simply claiming that constraints are always evil and must always be replaced by freedom. Instead, an argument for a specific freedom must show that the interests that can be satisfied by that kind of freedom are somehow better or more worth satisfying than the interests that other opposing kinds of freedoms could satisfy.

Justice and fairness

Justice and fairness are essentially comparative. They are concerned with the comparative treatment given to the members of a group when benefits and burdens are distributed, when rules and laws are administered, when members of a group cooperate or compete with each other, and when people are punished for the wrongs they have done or compensated for the wrongs they have suffered.

Standards of Justice are generally taken to be more important than utilitarian considerations, however, standards of Justice do not generally override the moral rights of individuals.

Issues involving Justice and fairness are usually divided into three categories: Distributed Justice (concerned with the fair distribution of societies benefits and burdens), Retributive Justice (the just imposition of punishments and penalties upon those who do wrong), Compensatory Justice, (the just way of compensating people for what they lost when they were wronged by others).

Distributed Justice

The fundamental principle of Distributed Justice may be expressed as follows:

Individuals who are similar in all respects relevant to the kind of treatment in question should be given similar benefits and burdens, even if they are dissimilar in other irrelevant respects; and individuals who are dissimilar in a relevant respect ought to be treated dissimilarly, in proportion to their dissimilarity.

The fundamental principle of distributed Justice, however, is purely formal. It is based on a purely logical idea that we must be consistent in the way we treat similar situations.

Justice as Equality: Egalitarianism

Every person should be given exactly equal shares of a society's or a group's benefits and burdens.

Egalitarians base their view on the proposition that all human beings are equal in some fundamental respect and that, in virtue of this equality, each person has an equal claim to society's goods.

Critics claim that there is *no* quality that all human beings possess in precisely the same degree.

Most people would argue that Justice requires that affluent societies satisfy at least the basic needs of their members and not let them die of starvation, exposure, or disease.

Justice Based On Contribution: Capitalist Justice

Benefits should be distributed according to the value of the contribution the individual makes to a society, the task, a group, foreign exchange.

The principle of contribution is the most widely used principle of fairness used to establish salaries and wages in American companies. One of the assumptions behind the "Puritan ethic" is that the harder one works, the more one deserves. The value of a person's product should be determined by the market forces of supply and demand.

Justice Based On Needs And Abilities: Socialism

Work burdens should be distributed according to people's abilities and benefits should be distributed according to people's needs.

The principle of need and ability, however, is the principle that tends to be least acknowledged in business.

Consequently, opponents conclude, workers would have no incentive to put forth any work efforts at all, knowing that they will receive the same whether they work hard or not. The result, it is claimed, will be a stagnating economy with the declining productivity (a claim, however, that does not seem to be borne out by the facts).

Justice as freedom: Libertarianism

From each according to what he chooses to do, to each according to what he makes for himself (perhaps with the contracted aid of others) and what others choose to do for him and choose to give him of what they've been given previously (under this maxim) and haven't yet extended or transferred.

In general, people should be allowed to keep everything they make and everything they are freely given. Obviously, this means that it would be wrong to tax one person (that is, take the person's money) in order to provide welfare benefits for someone else's needs.

The critics of Libertarianism say, if people through no-fault of their own happen to be unable to care for themselves, their survival should not depend on the outside chance that others will provide them with what they need.

Justice As Fairness: Rawls

The principles of distributed Justice that Rawls proposes can be paraphrased by saying that the distribution of benefits and burdens in a society is just if, and only if:

1. Each person has an equal right to the most extensive basic liberties compatible with similar liberties for all, and
2. Social and economic inequalities are arranged so that they are both
 - a. To the greatest benefit of the least advantage persons, and
 - b. Attached to offices and positions open to all under conditions of fair equality of opportunity.

Principle 1 is called the *Principle Of Equal Liberty*. Essentially it says that each citizen's liberties must be protected from invasion by others and must be equal to those of others.

Principle 2a is the *Difference Principle*. It assumes that a productive society will incorporate inequalities, but it then asserts that steps must be taken to improve the position of the most needy members of society such as the sick and the disabled unless such improvements would so burden society that they make everyone, including the needy, worse off than before.

Principle 2b is the *Principle Of Fair Equality Of Opportunity*. It says that everyone should be given and equal opportunity to qualify for the more privileged positions in society's institutions.

Rawls principle of Justice consists of determining what principles a group of rational self interested persons would choose to live by, if they knew they would live in a society governed by those principles, but that they did not yet know what each of them would turn out to be like in that society.

Rawls refers to the situation of such an imaginary group of rational persons as the "original position", and he refers to their ignorance of any particulars about themselves as the "veil of ignorance".

Retributive Justice

If the purpose of a punishment is to deter others from committing the same wrong or to prevent the wrongdoer from repeating the wrong, then punishment should not be greater than what is consistently necessary to achieve these aims.

Compensatory Justice

Traditional moralists have argued that a person has a moral obligation to compensate an injured party only if three conditions are present.

1. The action that inflicted the injury was wrong or negligent.
2. The person's action was the real cause of the injury.
3. The person inflicted the injury voluntarily.

Traditional Utilitarianism

The utilitarian principal holds that:

An action is right from ethical point of view, if and only if, the sum total of utilities produced by that act is greater than the sum total of utilities produced by any other act the agent could have performed in its place.

Utilitarianism holds that in the final analysis only one action is right: that one action whose net benefits are greatest by comparison to the net benefits of all other possible alternatives. Both the immediate and all foreseeable future costs and benefits that each alternative will provide for each individual must be taken into account as well as any significant indirect effects.

One must determine what alternative actions or policies are available to one at any occasion, for each alternative action one must estimate the direct and indirect benefits and costs that the action would produce for each and every person affected by the action in the foreseeable future. The alternative that produces the greatest sum total of utility must be chosen as the ethically appropriate course of action.

Utilitarianism also has the advantage of being able to explain why we hold that certain types of activities are generally morally wrong (lying, adultery, killing), while others are generally morally right (telling the truth, fidelity, keeping ones promises). Traditional utilitarians would deny, however, that any kinds of actions are always right or always wrong.

Utilitarian views have typically been used in economics, techniques of economic cost benefit analysis, and efficiency.

Problems of measurement

One major set of problems with utilitarianism is centered on the difficulties encountered when trying to measure "utility." If we cannot know which actions will produce the greatest amounts of utility, then we cannot apply the utilitarian principal.

Instrumental goods are things that are considered valuable only because they lead to other good things. Intrinsic goods, however, are things that are desirable independent of any other benefits they may produce. Health is an intrinsic good, money is an instrumental good.

To say that someone *needs* something is to say that without it he or she will be harmed in some way, to say that a person *wants* something is to say that the person desires it.

The most flexible method of providing a common quantitative measure for the benefits and costs associated with the decision is in terms of their monetary equivalents. The value a thing has for a person can be measured by the price the person is willing to pay for it.

Utilitarianism's problem with Rights and Justice

The major difficulty with utilitarianism, according to some critics, is that it is unable to deal with two kinds of moral issues: those relating to Rights and those relating to Justice. The utilitarian principal implies that certain actions are morally right when in fact they are unjust or they violate people's rights.

The great benefits a system may have for the majority does not justify the extreme burdens that it imposes on a small group. The shortcoming of utilitarianism is that it allows benefits and burdens to be distributed among the members of society in any way whatsoever so long as the total amount of

benefits is maximized. Utilitarianism looks only at how much utility is produced in a society and fails to take into account how that utility is distributed among the members of society.

Considerations of Justice (which look at how benefits and burdens are distributed among people) and Rights (which look at individual entitlements to freedom of choice and to well-being) seemed to be ignored by analysis that looks only at the costs and benefits of decisions.

Utilitarian Replies To Objections On Rights And Justice

According to the rule-utilitarian, when trying to determine whether a particular action is ethical, one is never supposed to ask whether that particular action will produce the greatest amount of utility. Instead, one is supposed to ask whether the action is required by the correct moral rules that everyone should follow.

The theory of the rule-utilitarianism:

1. An action is right from an ethical point of view if and only if the action would be required by those moral rules that are correct.
2. A moral rule is correct if and only if the sum total of utilities produced if everyone were to follow that rule is greater than the sum total utilities produced if everyone were to follow some alternative rule.

For example, it is clear that a moral rule that forbids killing without the due process of law will, in the long run, have greater utility for society than other kinds of rules.