

RIGHTS

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Summary

The recognition of a right sets limits to what it might otherwise seem desirable to do. Rights may take the form of liberties, claims, powers, or immunities and legal rights may be distinguished from moral rights. Legal rights are embodied in law and may vary under different jurisdictions. Establishing their existence is a factual matter. In contrast, rights claimed as moral rights have universal validity, even if they have not secured universal recognition.

There are varying opinions as to what are the requirements for possessing rights. Originally conceived as specifically applying to humans, some would extend them to animals or even aspects of non-animate nature. This has implications for their content. The rights of human beings are often seen as centrally concerned with protecting freedom, but extending the concept beyond humans means linking them to the protection or promotion of interests.

The idea of rights is central to the liberal notion of justice, but the distinction between negative and positive rights (between choice and benefit theories) is significant. The seventeenth- and eighteenth-century notion was of rights as protecting the liberty of ordinary people against oppressive rulers, but twentieth-century statements by international bodies have added to these positive rights, especially cultural and economic rights to goods such as health and education.

While the first require only laws and law-enforcement agencies, the second require taxation and extensive bureaucracy (i.e. the first set limits to government, while the second extend it).

While the concept of rights has been criticized and while conflicts of rights exist, they can be justified within diverse ethical approaches and are important for their global political and social impact.

1. Introduction

Various analyses of the concept of rights have been offered, but in general it can be agreed that recognizing a right sets a limit to what, for other reasons, it might seem desirable to do. For this reason, rights have been described as side constraints, or compared to the trump cards in a card game. But they have also been dismissed as metaphysical concepts of no validity or analyzed away as emotive or prescriptive language used to secure compliance. They may also be equated with legal regulations so that the existence of a right becomes a straight matter of fact—either such a rule is laid down in the constitution or it is not. Rights have also been broken down into categories, for example, as active or passive rights—rights to do or not do something, or to have something done or not done to oneself—while, early in the twentieth century, the American jurist Wesley N. Hohfeld offered a famous and more detailed taxonomy of rights as claims, powers, liberties, or immunities. These varied positions must undoubtedly be taken into account in any full understanding of the function of rights in the language and politics of the present day.

To begin with, then, it is true that the idea of rights is closely linked to law, and that at least one kind of right is a legal right. Legal rights are embodied in a system of law, and they are detailed in legal rules, together with penalties for violating those rules. Such rights may vary under different legal systems. The same, however, is not true of the kind of rights that are described as moral rights. These are not constrained by time or place; but neither are they always and everywhere embodied in law. Some do not need to be, of course, and some cannot be; for example, someone's right to gratitude from a beneficiary is hardly of interest to the legal authorities, nor could it be enforced. But other moral rights, which are claimed as universal human rights, have special status and importance. In the case of these rights, which would include, as a minimum, rights to life and liberty, the international community, like many individual countries, aspires to see them established in international law.

A number of features mark out the area of rights as moral concepts. To begin with, they are regarded as self-evident, and not grounded on any other moral concept. It follows, therefore that their recognition is the task of either reason or intuition. It is not a matter of empirical observation. These sorts of rights cannot normally be overridden or forfeited, except in special circumstances, such as in the case of official punishment for crimes, or in self-defense.

Secondly, they are universal; they are possessed by everyone, not just by any particular privileged category of beings. In the words of the French *Declaration of the Rights of Man and of the Citizen*, people “are born and remain free and equal in rights.” At the same time, it has traditionally been held that the bearers of rights are individuals, and that even if rights are attributed to groups, the group members possess those rights as individuals. This is not to deny that nations may count as individuals in international law; but it is to suggest that, outside this context, to talk of “group rights” is a shorthand

or abbreviated way of talking about the rights of individual members of groups, that “women’s rights” are the rights of individuals who are women; “gay rights” of individuals who are gay; and so on. This, of course, by no means diminishes their status, nor does it prevent people with a common link from campaigning for justice for themselves and for others like them.

The idea on which this is based—that there are only particular beings, and in society only particular human beings—is a claim of logic rather than ethics. Indeed, it can be traced back to the medieval logician William of Ockham (1285–1347), although it was more recently and more notoriously expressed by the former British prime minister Margaret Thatcher when she said that “There is no such thing as society”—a remark much ridiculed by those unfamiliar with the antiquity of this particular debate. One reason for the unpopularity of the sentiment is the assumption that it implies approval of a non-communitarian society made up of isolated self-seeking individuals without roots or relationships in their community. However, “individual” does not necessarily exclude family in this context, and indeed the early rights theorists of the seventeenth and eighteenth centuries would probably have taken the inclusion of family members for granted when they spoke of the individual.

2. Who or What Can Possess a Right?

There are some who would go beyond the universality involved in ascribing rights to all human beings, in order to extend the protection of rights to non-human animals. Others would extend them also to the inanimate world, or even indeed to the biosphere itself. In practice, however, it is not necessary to do this in order to provide a moral case for the protection of the natural world. This is because the preservation of the rest of nature in an efficient state is essential for the future life of humankind. Hence, a duty to the planet as a whole can be formulated indirectly as a duty to all human beings, including future people, our descendants and successors. The issue of environmental responsibilities, then, can readily be accommodated within a context of concern for human rights, and so they can be treated independently of questions raised by those who advocate a bio-centered environmental ethic. This is not to say that there cannot be valid rights claims for subjects other than humans, only to say that there is in the end no conflict between a fully thought through environmentalism based on human rights, and an ecologically sensitive approach. Meanwhile, for other more practical reasons there may be little to gain and much to lose by diluting the concept of universal human rights with claims for the recognition of other non-human entities.

But this issue is often discussed in relation to the question of what criteria might apply if an entity is to possess rights. Various suggestions have been made as to what these might be:

- Only beings possessing reason, and therefore capable of choice, can have rights
- Any creature capable of suffering has rights
- Anything that has interests can have rights
- All and only “persons” have rights

These categories are not as self-explanatory as they might appear. According to the first, rights can be attributed to conscious humans, but not to fetuses, comatose humans, or

most animals—something that has, of course, implications for the ethical assessment of such contentious issues as abortion, euthanasia, and the use of animals for food or medical experimentation. The second criterion would open up the way to recognize animal rights, although it should be said that the English utilitarian philosopher Jeremy Bentham (1748–1832), while he asserted that the suffering of animals does matter morally, did not express this view in terms of rights, dismissing the notion of natural rights as “nonsense.” The third criterion would make it possible to attribute rights to aspects of the inanimate natural world, such as trees, forests, and waterways, while the fourth approach, which is shared by a number of contemporary philosophers, particularly in the area of medical ethics, allows some animals to enjoy rights on a more or less equal basis with humans, but excludes immature humans, embryos, fetuses, and the irreversibly comatose from consideration as rights bearers.

3. What Can Be the Content of a Right? What Sort of Things Are There Rights To?

The answer to these questions is closely connected to the view taken of who may have a right. If it is necessary to possess reason and the capacity to make choices, rights will be seen mainly, though not necessarily exclusively, as protecting freedom of action and freedom from interference by other people. If the ability to suffer is what matters, then it would seem that a right is a passive claim against being made to experience pain, but perhaps also a positive claim to be provided with the resources needed to avoid the suffering caused by hunger, or lack of medical treatment. If it is a matter of having interests, then rights will consist of anything necessary to protect or further those interests, so long as this is compatible with the equal rights of others. But one broad point that applies in all cases is that a right must be something that it is in the power of other human agents to control. There would be no point in claiming a right to a reliable food supply in a situation of worldwide famine, unless indeed there were people who had access to supplies of food that could be released for general use, and were refusing to do this.

Sometimes rights are held to be correlatives of duties, and it is true that the existence of a right often does entail that someone has a duty to do something specific or to refrain from doing something else. However, a direct reciprocal relation between two individuals is not always involved. A right to privacy, for example, requires a widespread duty on the part of a vast number of people who have no connection to the original rights holder.

4. Rights and Justice

The idea of rights, then, essentially looks outwards from individual persons, setting bounds to the ways in which they may interact with each other, as well as to the ways in which they may be treated by governments or by powerful organizations. Within a social context, conflicts of interest between individuals lead to a need for harmonization just as, at an international or global level, conflicts of interest between nations, or between international business interests and environmental considerations, require resolution. It is these elements of conflict and resolution that underlie the liberal notion of justice, to which the idea of rights is central.

The modern liberal theory of justice is related to political theories that ground the obligation to obey the laws of a state or community on contract and the consent of the governed. The idea of rational choice is fundamental to such theories. But consent is a notion applicable only within the limits of a particular community or political system and, increasingly, people have been looking beyond the boundaries of their own society to extend such notions to a more internationalist conception of justice. People see themselves as having some responsibility for strangers starving or dying from treatable disease in distant lands, although they may disagree as to whether the moral claim in this case is for justice or simply for compassion or sympathy. Increasingly, too, in a novel and more controversial development, this concept of responsibility is being applied to cases of persecution or ill treatment, whether of individuals or groups, at the hands of their own governments or rulers. The controversial aspect of this arises from the fact that the recognition that rights are being violated does not necessarily provide a direct justification for intervention by outsiders—except in the most extreme cases, rights of sovereignty and of national independence may well take precedence.

Rights are usually viewed as politically radical concepts, since they often provide the rallying cry for groups opposed to oppressive regimes. But here the divide between the negative and the positive view of rights takes on a special significance. This can best be understood by setting the distinction in its historical context. While the eighteenth-century notion was of rights as protecting liberty, especially of ordinary people against their rulers, they were protective and limited; twentieth-century statements have included a substantial positive element, including rights to various kinds of welfare goods, particularly in regard to health and education. The earlier rights assertions simply asked that governments or rulers should not kill, injure, or seize the property of subjects and, as a natural extension of this, that citizens should not do these things to each other. What was needed to secure this was a legal system, together with courts and agencies like the police or military to secure compliance with the law. Welfare rights, in contrast, require taxation and an extensive bureaucracy (a large “public sector”) and so, paradoxically, justify an extension of government rather than a limitation on it. In contemporary terms, the distinction is often described as one between choice theories of rights, according to which the function of rights is to protect liberties, and benefit theories, according to which they are seen as promoting interests. These are not necessarily exclusive, of course, but in order to see which is the dominant notion, it will be helpful to look in more detail at the way in which the general concept of a right originated.

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Biographical Sketch

Brenda Almond studied philosophy under A.J. Ayer at University College London and has taught in universities in England, the United States, Africa, and Australia. She is emeritus professor of moral and social philosophy at the University of Hull in England and is vice-president of the Society for Applied Philosophy. She received an honorary doctorate for philosophy from Utrecht University and is an elected corresponding member of the Austrian Academy of Sciences. Her books include *Exploring Ethics: A Traveller's Tale* (Oxford: Blackwell), *Moral Concerns* (Atlantic Highlands, N.J.: Humanities Press), and *The Philosophical Quest* (London: Penguin).