Philosophical Medical Ethics

Rights

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"All innocent human beings have a right to life," claimed the moral prosecution of Dr Arthur. In my last two articles I discussed some of the problems associated with the term "human being" in this context. Here I shall look at some problems associated with the term "rights."

Essentially, rights are justified claims that require action or restraint from others—that is, impose positive or negative duties on others. An enormous variety of rights are claimed, ranging from so called human rights, via rights to unemployment benefits and free prescriptions, to the right to sit at high table or use the executives' lavatory.

To begin to make sense of talk about rights it is essential to make some distinctions. From the extensive variety of such distinctions that appear in philosophical and legal works¹⁻⁷ I propose to focus on two that are particularly important in this context. The first is between legal and other institutional rights on the one hand and moral rights on the other. Within the class of moral rights I shall try to distinguish between universal rights that are possessed by everyone and rights possessed by some but not all people either as a result of prior actions such as promising or making a contract or arising out of special relationships or particular social roles. In the context of these distinctions I shall consider briefly what is meant by "inalienable," "human," and "fundamental" rights. The second distinction I shall consider is that between rights that require others to act and rights that require others to refrain from acting.

Legal and institutional rights versus moral rights

There can be no doubt that legal and institutional rights exist; examples are the various legal rights in Britain to free (that is, taxation financed) medical care, education, and other welfare services. As indicated above, a host of non-legal institutional rights are granted by many social institutions to their members or to certain subsets of their members. The common characteristic of legal and institutional rights is that they can be created and abolished by decisions made by the appropriate people, such as parliaments, committees, or dictators. Many would agree with Bentham that these are the only sorts of rights and that it is nonsense to talk of moral rights or natural rights (which, briefly, are moral rights "naturally" possessed by everyone), while the concept of inalienable or imprescriptible rights (rights that cannot be taken away from people) is "nonsense on stilts".⁸ What reason might there be to disagree with Bentham's scathing rejection of moral rights?

Perhaps the most important is a powerful and widespread moral intuition that people simply have certain basic moral rights, certain intrinsic entitlements, that they can pit against any tendency of others who are stronger either individually or collectively to wrong

them—and who in particular may band together to make laws and other rules that wrong them. The very idea that despots or despotic governments might decide to enact laws permitting (for example) the killing or enslavement or total dispossession of some group of people generally evokes a widespread and powerful moral intuition that, whatever the law may say, people have a moral right or entitlement not to be killed, enslaved, or totally dispossessed.

Such moral rights are claimed in various national and international constitutions: those enshrined in the French and American constitutions depend appreciably on the work of that distinguished Fellow of the Royal College of Physicians, John Locke. A powerful if at first surreptitious proponent of the English revolution of 1688, Locke was one of the most influential promoters of the concept of natural human rights, a concept that had had little place in moral philosophy until the late Middle Ages (indeed, it appears that the classical Greek philosophers had no word for rights⁹).

Interpreting earlier theories of natural law, notably that of Aquinas as providing "a complete equipment of human rights and duties,"¹⁰ Locke defended the rights to "life, liberty, and estate" as being god given moral rights of man that people had a right to defend, if necessary by force. (Locke is often attacked for a "capitalist" preoccupation—that is, with the right to property—even though he explicitly states that he uses the term property as a shorthand for life, liberty, and estate.¹¹)

If one accepts the validity of such moral intuitions one is committed to the existence of moral rights. A remarkable cross section of moral positions do incorporate these intuitions including those of the "pro-life" campaigner, who believes in the right to life of fetuses or severely defective neonates, or both; the person who is against apartheid, believing that South African apartheid laws violate the equal moral rights to liberty of blacks; the libertarian capitalist, who believes that taxation violates the right to keep "the fruits of one's own labour"; and the marxist, who believes that capitalism infringes the right not to be exploited by others.

Others, however, reject the concept of rights or else, like some utilitarians, see them as a convenient fiction, general acceptance of which will tend to maximise welfare and is therefore morally justified. Non-utilitarian opponents of rights tend to accept the correlative moral obligations that human rights entail but deny any need to talk of rights on the grounds that the duties are sufficient on their own. They may add that emphasis on rights tends to encourage people to pursue moral demands on their own behalf at the cost of neglecting their moral duties.

Universal moral rights

If one accepts that people have moral rights it is worth distinguishing between the different sorts. One category is universal moral rights, which are attributable to all people or to all humans (hence human rights and hence various problems of scope as outlined in the two previous articles). Nailing his flag firmly to what some would call the speciesist mast of human rights, the lawyer Professor H L A Hart argued that if there are any universal human

rights they are secondary to one fundamental human right (fundamental in the sense of not depending on some other moral right), notably the "equal right of all men to be free."¹² (Some would doubtless add the charge of sexist language to that of speciesism.)

It is clear from the context that Hart meant, by right of everyone to be free, free to exercise his or her autonomy so far as this is consistent with everyone else's freedom to exercise autonomy. I shall return to the issue of autonomy in the next article, but the important (and of course controversial) point is that if there are any rights they all stem from the fundamental moral right to be an autonomous agent, which itself generates a fundamental moral obligation for us to respect each others' autonomy and thus accept restrictions on our own: a very Kantian position.

Special moral rights

In contrast with universal moral rights there are also (if there are moral rights at all) special moral rights possessed by some but not others. Some such rights arise from prior actions. Thus if Smith promises Jones £10 Jones has a moral right to be paid £10 by Smith. Fortunately for Smith this is not a universal moral right—though it is, as a moral right, universalisable in that anybody who has been promised something has a moral right to be given that thing by the person who promised it, assuming no disqualifying circumstances. (The importance of universalisability in the context of moral philosophy is clearly argued for by Hare.¹³) Contracts between people also create special moral rights, which are essentially based on reciprocal promising.

A second class of special moral rights are those arising from special social relationships, for example the rights of children to be looked after by their parents (genetic or otherwise; hence my suggestion that this moral right emerges from a social relationship rather than a genetic one). Hart plausibly argued that the whole network of our sociopolitical relationships is a source of special rights of which institutional and legal rights are examples; and the philosopher Professor Richard Brandt argued that all rights, including "worldwide rights" are a function of social systems.¹⁴

Types of duties correlating with rights

Some rights impose obligations on others to do things; others simply require others not to do things. (Bentham apparently called those that require others not to do things vested liberties rather than rights.¹⁵) Rights to be paid are obvious examples of the first, the right not to be enslaved of the second. That rights do not of themselves impose obligations on the right holder, though he may also have an obligation to himself corresponding to the right, is worth noting. (Mill, for example, argued that there was not only a right not to be enslaved but also a duty not to sell oneself into slavery.¹⁶)

An important question is whether there are, and indeed whether there can be, any universal rights that require others to act and if so which they are. Thus, although it is clear that the claimed universal moral rights to life, liberty, and estate impose a moral obligation on everyone to refrain from certain sorts of action, many find the suggestion implausible that they impose moral obligations on everyone to act and are not convinced that they require anyone to act. X's right to life, for example, clearly imposes a moral obligation on everyone not to kill X (other moral considerations not intruding); equally clearly it cannot impose on everyone an obligation to act to keep X alive. Is there, however, a universal right to life such that everyone has a right that at least someone else is morally obliged to act to keep him or her alive? If so how are those thus obligated to be identified and what is the extent of their obligation?

I shall not even attempt to answer these difficult questions here (though I shall consider them obliquely in a later article about acts and omissions in the context of killing and letting die), but it seems clear that if there is universal right to life that morally obliges others to act positively to keep everyone alive (1) it is more complex than, and additional to, the universal right to life construed as a universal

right not to be (intentionally) killed by others and (2) it has radical implications for most people's behaviour: the regular cheque to Oxfam is hardly going to satisfy its moral demands.

Finally, it is worth recalling that rights—even fundamental universal moral rights—do not have to be thought of as absolute. As I indicated in the article on deontological theories of ethics, absolutism has the consequence, untenable to many, that when absolute moral principles conflict it is impossible to act rightly; it is more plausible to think of absolute moral principles, including moral obligations to respect the moral rights of others, as *prima facie* absolute—that is, absolute when they do not conflict with other *prima facie* absolute moral principles.¹⁷

Undoubtedly, talk of rights can be transmuted into talk of others' moral duties: duties, for example, not to harm, to respect autonomy, to seek justice, and to help others. Rights, however, represent only a subset of the applications of those moral principles. One important differentiating feature of this subset is that it concerns situations in which it is morally respectable to demand from others a certain sort of moral consideration. It is this that helps to make rights so contentious.

Moral obligations are often seen as matters for a person to decide for himself. When, however, moral decisions lead to transgression of other people's rights such delicate non-interference becomes inappropriate. As Professor Brandt pointed out, the language of moral rights morally justifies, and indeed positively encourages, those whose rights are transgressed to feel resentment, to protest, to take a firm stand. Uncomfortable as this may be to others, it "hardly needs pointing out that encouragement of the oppressed and maltreated to stand up in their own behalf is beneficial for society in the long run."¹⁴ Alternatively, as Professor Dworkin put it, "Individual rights are political trumps held by individuals." They are crucial in representing "the majority's promise to the minorities that their dignity and equality will be respected."¹⁸

References

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A doctor in his 70s, who had classic migraine attacks in his 20s, has started having migraine attacks again. These seem to be associated with flexion or extension of the neck. He has some cervical spondylosis. What might be the cause of these attacks and what treatment is advised?

The presenting symptoms, especially the visual ones, with zigzag spectrum and hemianopia, may have a vascular basis but are not necessarily migrainous. Movement of the neck may interfere with vertebrobasilar supply to the brain with consequent ischaemic changes in the occipital cortex. It would be worth while trying a collar which will restrict movements of the neck and may abolish the attacks altogether. As a rule it would be unsafe to diagnose migraine starting in the 70s when more structural lesions are common, and these should be investigated further.—K J ZILKHA, consultant neurologist, London.