

2.2 RIGHTS AND DUTIES

Canadian Charter of Rights and Freedoms

American Bill of Rights

UN "Universal Declaration of Human Rights"

France: "Declaration of the Rights of Man"

Disney stockholders proposed: "human and labor rights standards for China" for Disney facilities or suppliers:



- (1) No goods or products ... shall be manufactured by bonded labor, forced labor, within prison camps or as part of reform-through-labor or re-education-through-labor programs.
- (2) ...adhere to wages that meet worker's basic needs, fair and decent working hours...

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- (3) ...prohibit the use of corporal punishment, any physical, sexual or verbal abuse or harassment of workers.
- (4) ...[only] use production methods that do not negatively affect the worker's occupational safety and health.
- (5) ...not call on police or military ... to prevent workers from exercising their rights.
- (6) ...promote...freedom of association and assembly, including the rights to form unions and bargain collectively; freedom of expression, and freedom from arbitrary arrest or detention." (72)

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The Concept of a Right: "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" (73)

History: The concept of rights derives from Roman Law, and was originally extended to morality by natural law theory

Legal right: Exists when the legal system supports the right to act or receive actions

Natural law theory: Usually thought of as God's law, the way in which nature should run

Moral rights: Rights possessed equally by all human beings simply by being human.

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Sometimes we use “right” to imply:

- (i) **Weak sense:** One has the right because there are no explicit legal or moral prohibitions **against** an activity: e.g., I have the right to read comic books, and dress like super heroes, even if I’m over 30.
- (ii) One has special authorization to act to protect the interests of others (e.g., police officers) or oneself (e.g., property owners).
- (iii) There are explicit legal or moral prohibitions or requirements on others to enable peoples’ interests (e.g., public health or education) or not to prevent people from pursuing their interests (freedom of speech or suffrage)

Moral rights are activities or interests the individual must be allowed (or even helped), to pursue

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- (1) Moral rights are logically connected to moral duties: my right to do or be helped to do X entails your duty to permit me or to help me to do X
- (2) Sometimes duties belong to groups, such as society: e.g., Society has the duty to make sure jobs are available to its workers; or, to make sure that people’s rights to vote, to privacy, etc. are respected.
- (3) Having moral rights entails that people are free to pursue, or be helped to pursue, their moral rights as they choose, and everyone has the same right
- (4) Moral rights can justify one’s actions and can be used to ask for the help of others

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Moral rights may conflict with overall utility because:

- (a) The purpose of moral rights is to protect the individual’s welfare and choices from those of the group; in contrast, utility promotes overall welfare, but is concerned with the individual only as that person’s utility contributes to the group’s utility
- (b) Rights constrain the appeal to the benefit of the group (for example, my right to life trumps the social advantage of my death)

Thus, *usually*, rights trump utility: If an action or interest is protected by a moral right, typically (*ceteris paribus*) others’ benefits don’t warrant interference with pursuing that action or interest

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However, rights are not completely immune from all utilitarian considerations: If the benefits or losses are large enough, they might overwhelm personal rights

- public emergencies, such as war
- pollution vs. property rights

Negative rights: When others have *negative duties* **not** to interfere with the exercise of my rights, these rights are negative rights

E.g. others have the duty not to interfere with my private affairs, with my ability to properly control my property, invade my privacy, etc.

Positive rights: When others have a positive duty to provide rights holders with what they need to freely pursue their interests

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E.g., others may have the duty to help others get an education, adequate health care, income, etc.

Motivating idea: Unless a person has certain basic goods, that person cannot easily pursue their own interests

Right to life:

- (negative) the right not to be killed
- (positive) the right to have provided (if required) essentials for life (food, shelter, clothing, etc.)

Contractual Rights and Duties: Special rights and duties, or obligations arise when people make specific agreements.

- (1) They involve rights and duties between specific individuals
- (2) They involve specific transactions
- (3) They involve and are made possible by a publicly accepted system for defining and enforcing such agreements

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For example, social institutions entail that married parents have a special duty to look after their children, doctors after the health of their patients, etc.

Each contractual right and duty takes place within some publicly accepted institution, which define contractual positions and obligations

Ethical rules governing contracts:

1. Both parties must have full knowledge of the nature of the agreement
2. Neither party must intentionally mislead the other about the facts of the contractual situation
3. Neither party must be under duress
4. The contract cannot bind the party to an immoral act

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A Basis for Moral Rights:

Immanuel Kant (1724-1804)

Legal rights derive from legal systems, which differ through time and around the world; so legal rights cannot explain or justify moral rights

Since respecting rights occasionally conflicts with utility, the principle of utility also cannot explain rights

By Kant's time, many philosophers and scientists did not accept the traditional, religious concept of natural law; so Kant needed another basis for rights

Basic moral principle: Everyone has the right to be treated as free and equal, and everyone has the duty to treat others the same way

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Kant's First Categorical Imperative (CI(I)): "I ought never to act except in such a way that I can also will that my maxim should become a universal law" (78)

Velasquez's version: "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" (79)

CI(1) implies that a person's actions must be reversible: I must be willing that others act towards me as I have acted towards them—universal laws include *me*!

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e.g. Is firing someone merely because of their race reversible? Could I be (*rationally!*) willing that others fire me just because of my race?

Kant intends to explain our general acceptance of the Golden Rule: Do unto others as you would have them do unto you.

This rule follows from our common humanity.

On Kant's view, if an act is immoral, it's not even *logically conceivable* that I be willing to have everyone act in that way, for two sorts of reasons:

(1) A universalized immoral action might nullify the action:

e.g., If everybody breaks their promises, such as contracts, the practice of promising or making contracts could not exist.

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e.g.: Since lying is misleading others to get them to believe something false (perhaps to one's own advantage), if everyone lied whenever it suited them, communication would cease to exist

But then, even lying would not exist—since there can't be any lies without co-operative communication—unless it's possible that others believe your lies are true

(2) A reversed, immoral action might involve contradicting one's nature as a free, rational being:

e.g., I refuse to help the poor; I thus imply that everyone may choose to refuse to help others, even when in dire need, and this includes me.

But as a rational being, I cannot will that I be denied the essentials for my life.

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Thus, CI(I) entails both *universalizability* and *reversibility*:

Universalizability: The person's reasons for acting must be ones that everyone could act on, at least in principle

Reversibility: The person's reasons for acting must be reasons that they could be rationally willing that all others use, even for how they treat themselves.

The first categorical imperative is intended to capture the moral force of these rhetorical questions:

How would you like to be treated that way?

Suppose everyone acted that way?

Unlike utilitarians, Kant focuses on subjective motives and not objective consequences:

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For Kant, actions have moral worth only if they are motivated by a sense of duty to the Categorical Imperative—an action is right, just in case the motivation for doing the action is: *that it is right*.

An action has no moral value if it's done solely out of, e.g., good nature, a desire to please, etc.

The Second Formulation of the Categorical Imperative (CI(2)): "Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end" (80)

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Velasquez's version: 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 says this means I must actually help others to achieve their needs

Kant argues that both formulations are actually equivalent: "People are to treat each other as free and equal in the pursuit of their interests" (80), and this means they must be able to universalize and reverse their actions to each other

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Kantian Rights: Kant doesn't say which precise rights people have—these will be those that are required to be free and equal

e.g. the right to free speech is more important than other people's offence, but this right doesn't entitle one to libel or defame others; so freedom of speech is a limited right

No one could rationally will that everyone, oneself included, be deprived of help for basic needs

So, people have a *positive right* to have basic needs provided, and each of us have a duty to meet the basic needs of others

Kant can also defend our *negative rights* to freedom of thought, from injury or fraud, association, speech: Free and equal beings cannot be deprived of these rights and remain free and equal.

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Criticisms of Kant:

Criticism (1) Vagueness: (An *internal* issue)

The CI is not precise enough, in that it doesn't give clear advice in all situations:

e.g. On punishing people for murder: In one sense of "willing," I clearly could will that every murderer be punished, since everyone would want to be protected from murderers.

However, in another sense, I might not be willing, since I would not *want* to be punished for murder

What are these two senses of "willing"?

Rational willing vs. mere desiring or preferring

Which sense of willing determines what is morally correct?

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Does an employer who pays only minimum wage and doesn't respect safety go against the (2nd) categorical imperative, if she doesn't force people to work for her?

Problem (2) (Balancing competing rights) Kant doesn't seem to provide guidance about how to balance competing rights (for example, privacy vs. self-expression)

In defence of Kant: These more detailed issues flow from the precise nature of people and their interests, and are independent of the categorical imperative:

e.g. can we universalize playing musical instruments late at night, in areas where others need to sleep?

Problem (3): (Inconsistency or incompleteness) The worry is that people may universalize competing claims, but some of these (e.g. racism) are clearly immoral (e.g., suppose the employer claimed they were willing to be discriminated against if they were of that race?)

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Defence: If the employer truly could universalize in this way, he'd be acting morally

But can he?

Is this really a Kantian defence???

The Libertarian Objection to Kant

Nozick: "The only basic right that every individual possesses is the negative right to be free from the coercion of other human beings. This negative right to freedom from coercion, according to Nozick, must be recognized if individuals are to be treated as distinct persons with separate lives, each of whom has an equal moral weight that may not be sacrificed for the sake of others. The only circumstances under which coercion may be exerted on a person is when it is necessary to keep him or her from coercing others" (83)

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It follows that people must be free to trade, and pursue their legitimate private interests, so long as that doesn't make the situation of others worse

Libertarianism eliminates taxes for social programmes: Taxation means that people lose their liberty to decide how their own resources are to be used

This does not eliminate private charities; some libertarians even argue that they have a duty to help others; however, no one can coerce them into fulfilling this duty

Velasquez: Nozick doesn't come to terms with the negative impact one's free actions can have for others.

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“...because granting a freedom to one person necessarily imposes constraints on others, it follows that if constraints require justification, freedom will also always require justification” (84)

If there are limited resources, my freedom to exploit these may make it difficult or impossible for others to get what they need

e.g., the freedom of corporations to pollute restricts the freedom of others to breathe clean air

If there are a limited number of jobs available, those who take them deprive others of what they need to make a living

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In other words, since each freedom implies a corresponding coercive constraint, every freedom and constraint will need to be defended separately

Compromises in personal (negative) liberty may be required, if everyone's appropriate freedom is to be maximized

In other words, each of us may face a positive enforceable duty to meet the basic needs of others

Conclusion: We have no good reason to believe that only negative rights exist

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