

# RIGHTS

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**RIGHTS are a justified claim to a certain kind of treatment from others, to help from others or to be left alone by others.**

We begin our understanding of ethical theories by first looking at RIGHTS THEORY.

Today, we so clearly believe in rights that we seek no justification. we just have rights. Rights theory maintains that rights are important in themselves. The results that arise if rights are violated are not relevant. Consequences of violating rights of others are not relevant. We understand that rights can be beneficial to us, but those benefits are not the point. Even if you get no benefit, you still have the right. Thus, rights are important in themselves and not because of some factors or ethics outside of rights theory.

But our ethics of rights had to be formulated first. Rights theory had to begin somewhere. Early rights theory was written as philosophers sought political and legal rights for everyone. Philosophers such as Hobbes and Locke proposed that we find in the **natural state of man**, some conditions or traits that can be used to justify rights in the ethical sense. With that ethical justification, it would be possible to argue for legal rights for everyone.

So, to begin, we look at Hobbes and Locke who tried to imagine what human beings would be like in a **state of nature**, before governments and civilization, and we note how this early philosophy guided rights theory embodied in American thinking. We then look at more recent views on rights.

## Thomas Hobbes (1588-1679)

One of the earliest thinkers to discuss rights. Hobbes was a political philosopher. He was mostly concerned with governments and the relationship of governments to society. Being a political philosopher was most relevant at his time because Europe was then only beginning to realize that monarchy was not the only form of government, and Hobbes had a great hand in bringing about this realization. Under the monarchical system that prevailed in Europe, kings were presumed to have ethical divine rights, rights given to kings by God. The

concept of ordinary people having individual rights was strongly advocated by Hobbes.

In Leviathan, published in 1651, Hobbes maintained that

**Man in a state of nature has the right to do what is necessary to protect himself and to get what he can get however he can get it, everyman for himself.**

Imagine a primitive man living on a tropical island with fellow island natives. Every day is a fight for existence, to get just a decent coconut for supper. In this state of nature the strongest or the most devious gets the coconuts. But this is not a desirable life for most, so men give up their natural right to those [governments.] who contract [promise] to bring peace and protection.

**DO NOT USE OR QUOTE HOBBS ON CASE STUDIES.** Students read Hobbes and misunderstand. Hobbes is saying that once upon a time in the days of cavemen, before civilization, it was every man for himself. But we do **not** live in a state of nature. We are **not** cavemen. We live in civilized society, we have given up this “everyman for himself” rights scenario as soon as we are born in society. “Everyman for himself” only applies to a world with complete disorder. State of nature applies to primitive humans, maybe even before cavemen.

## **John Locke (1632-1704)**

Locke disagreed with Hobbes about the conditions of primitive humans. Locke maintained that there was never such a state of nature where every man is for himself alone. Instead, Locke emphasizes that humans are social animals. The most primitive man is part of a cooperating society. Such cooperation is how humans as animals survived in nature. Quoting Locke in his 1690 Second Treatise of Civil Government :

***In a natural state all were equal and independent, and none had a right to harm another in his life, health, liberty, or possessions.***

Notice how this view is opposed to the Hobbesian state of nature. Also, for Locke, Government does not over-ride society or individual rights, government must be accountable.

One of the most important elements of Lockean rights is his view on property and labor. Locke maintained:

When we mix our labor with the natural world, we blend part of ourselves with that labor. That is how we come to own property, ethically. So, labor accounts for most of the property value of an object, but these rights are limited by our ability to consume & our ability to produce goods--to prevent goods from being spoiled, or wasted. If we can labor to own more than we can use, then we no longer have a right to that property. We cannot just let what we have go to waste while other people do without because they cannot produce. But goods of greater durability can be exchanged for those that spoil. Money is durable, so we can exchange money for spoilable goods.

But once we begin to work earnestly and ethically accumulate more of these valuable durable goods (money) than our neighbors, then we must have some means of protecting these surplus durable goods so that others won't take them. Government arises as a means to protect the durable goods that you have exchanged for the fruits of your labor. In other words, once money comes into use, government becomes necessary to protect property. Before money and other such valuable durable goods (jewels, precious art, etc.) man kept what he could use and no more. Because government arises to protect property of governed, then:

***Property precedes government and government cannot dispose of the estates of the subjects arbitrarily.***

## **UNITED STATES DECLARATION OF INDEPENDENCE**

In 1776, we find a formulation of rights borrowed from philosophers such as Hobbes and Locke, in our own Declaration Of Independence. This document specifies:

**INALIENABLE RIGHTS to life, liberty and pursuit of happiness.**

Inalienable rights are rights that cannot be taken away or ignored. They are rights you cannot give up. Inalienable rights are a cornerstone of Lockean rights and prove very important to rights today.

Be aware, rights specified in the U.S. Constitution are **legal** rights. These rights were originally formulated on the basis of **ethical rights**. You cannot use legal rights to justify ethical rights. Instead, ethical rights are used to justify legal rights. Using our constitutional rights to justify ethical rights is an unethical perspective. If you want to say we should have a right because it is written in our U.S. constitution, this is like saying that people outside of the U.S. do not get

or should not also get those rights. Indeed our constitution is irrelevant. When discussing rights be careful not to confuse ethical rights with legal rights. A legal right is **not** an ethical right. Ethical rights are the reasons for legal rights. Legal rights are not reasons for ethical judgments about rights.

## Human Rights

Human rights are the rights internationally recognized by the United Nations. According to the United Nations Human Rights Committee, all human beings have some basic moral rights, some of which are:

- right not to be killed
- the right not to be harmed
- the right to liberty (freedom of movement and benign action.)

In this course, we will **not** use this language of human rights. Instead, rights are human rights, unless you look at animal rights. Animal rights rarely come up in relation to computers, so we just will refer to rights.

## NEGATIVE AND POSITIVE RIGHTS

**In contemporary ethics of rights, a distinction is made between negative and positive rights.**

### NEGATIVE RIGHTS

Negative rights are rights to not be interfered with. Negative here refers to being left alone, taking no action against us. Negative rights are rights to do what we want or what we need to do, and nobody should stop us in doing what we need to do as long as we do not interfere with the negative rights of others. These are our freedom rights, such as:

- right to practice religion we choose
- right to move about from place to place
- right to protect ourselves from danger
- right to privacy
- right to free speech
- right to make our own sexual choices
- right to seek work to provide for ourselves and our dependents.

- right to seek information
- right to buy, sell, trade
- right to offer services

## POSITIVE RIGHTS

Positive rights are rights to help from others (almost always the government) usually so that we can reasonably survive, such as:

- right to food, clothing, and shelter
- right to safety
- right to medical treatment
- right to information

It is important to recognize that these positive rights do not supersede our negative rights. Government does not automatically provide us with food or clothing. These are provided when we cannot get them for ourselves. Positive here refers to getting something added to our lives, something that we cannot add for ourselves for whatever reasons. In a perfect world, we would all be able to always get the things we need for ourselves. In a perfect world, we would only have negative rights. But things happen that require government to step in and provide for us, thus our positive rights arise. After a hurricane, flood, wildfire, earthquake or tornado, people lose their homes and most of their property. They are given temporary shelter, food, etc until they can recover from the disaster and build their lives again. A change of clothes, a place to bathe: we desperately need these in times of disaster and at those times government should provide them for us. This is our positive right. Clothing is one of the few durable goods that are usually considered our personal property yet serve also as a positive right. Government lets us keep clothes they give us because they just don't want it back. But they could indeed ethically ask us to give it back.

**Property is not a positive right.**

For example, in the USA victims of natural disasters are given FEMA trailers to live in when their homes are destroyed. The FEMA trailers provide shelter. The government supplied shelter because this is a basic positive right. But once homes are rebuilt, they have to call FEMA to pick up the trailers because the government did not give them property, just shelter. We do not have a positive right to own a home. **Property rights are negative rights or privileges.**

Property rights are not positive rights. We have the negative right to get shelter, and have that shelter be as permanent as we can get. This would be a kind of negative right to try to get property. But actually getting property is a privilege of

your circumstance of being able to manage to get property without violating rights of anyone else. Simply put, government does not owe you a home to keep. Property is something we want, but we do not necessarily need to own to survive.

For Locke, property is an important negative right. But by this he means, if you work to get property, nobody should just decide to take it away from you, not if you are **innocent** in how you got that property. In other words, if you got property by doing actions that did not violate rights of others, then nobody should be able to just take your property.

**Ethically speaking, we do not have the right to make a profit.**

Profit is a privilege, not a right. We do **not** have a negative right to not be interfered with so that we can make a profit. We do **not** have a positive right to help from the government so that we can make a profit. We have the negative right to buy and sell, and, ethically speaking we might go as far as saying we have the negative right to break even, but not to maximize profit.

In most countries, people have the **legal** right to keep profit. But when discussing rights be careful not to confuse ethical rights with legal rights. A legal right is not an ethical right. But **just because we have no right to make a profit, does not mean if we seek profit we are losing rights.**

Many of the things we need to do to make profit are well within our ethical rights. In almost all circumstances we have the right to offer goods for sale, to price those goods, etc. There is nothing inherently unethical about profit. Profit is just like a Christmas Bonus. You get that bonus in part if you merit it, but also in part if you are lucky. You do not have a moral right to a bonus. But that does not mean there is anything wrong with getting a bonus, it just means it is not much relevant to ethics of rights. **Please, just do not mention profit when doing rights analyses. Profit is not relevant to rights.** Do not say that we have no right to make a profit. This is not relevant. Profit is a motivation for buying and selling and offering services. You have a right to buy, sell, and offer services as long as when you do, you do not violate rights of others. Your motivation for doing business is not relevant.

## **IMPORTANT: MORE ON DISTINCTION BETWEEN NEGATIVE RIGHTS & POSITIVE RIGHTS**

So we understand that negative rights are rights to do what we want or what we need to do. These are fairly clear. The right to privacy, right to free speech, right

to protect ourselves, right to make our own sexual choices, right to seek work to provide food clothing & shelter for ourselves and our dependents.

Then how do we distinguish these negative rights from positive rights? When our negative rights are very important, they may need assistance from governments. This was the point of the social contract theories of Hobbes & Locke. Governments help us by providing our rights when we cannot, or they help us by making it easier for all of us to see our rights are met. Any positive right also has a negative right that mirrors it. The difference between negative and positive rights is that for the positive rights governments help us.

**EXAMPLE: We have the right to information.**

This means that we have the negative right to seek information we need, and nobody should interfere with our attempts to gather correct information. But as we all know, there are many people who try to distort the facts, and try to make it very difficult for us to get correct information. Right to information is such an important right that it often is a positive right too. This means that it is the duty of government to provide correct information to citizens, and to punish those who gravely violate our right to correct information. Notice that this right can conflict with our right to free speech. Is it okay for people to lie and distort the truth? Do we violate their right to free speech when we punish them? These are important considerations.

## **RIGHTS ENTAIL DUTIES.**

Usually philosophers explain the link between rights and duties in a reciprocating sense. If you have the right to free speech then you have the DUTY to reciprocate that right to other people and let them speak freely to you.

But the relationship between rights and duties is actually more basic than reciprocation. The best way to see this is to look at rights as a natural gift, and gifts should not be treated like they are nothing. We have all of us gone through the processes of getting gifts of Freedom and understand it in this basic sense. We all grew up. As a child you had most of the positive rights: rights to food, clothing, shelter, freedom from harm. But your negative rights were almost nil. You did not have the right to freedom of movement. Everywhere you went you had to have adult supervision. You had no rights to have sex or speak your mind freely. Your positive right to information was also greatly curtailed. There were just some things your parents did not want you to know about. But along with being a virtual prisoner of your parents and teachers, you had very few

duties (responsibilities). Lack of responsibility is the special gift of childhood. As you grew up, you were given rights: right to drink beer, right to have sex, etc. But along with these rights came the responsibilities. You can drink now, but should be responsible enough to handle that alcohol. You can have sex, but must be responsible for having safe sex or have to deal with all the consequences of unsafe sex. **RIGHTS BRING DUTIES.**

## **Positive Rights of Children**

Children are very limited in their negative rights. They are so limited because they are not yet able to reasonably and freely choose in many areas of consent. Children do not have the negative right to all information. They do not have most negative rights of sexual freedom. BUT, children have the most positive rights of all humans. It is our duty to protect children, to keep them safe from sexual coercion, to provide them with health care, education, a safe home, etc. It is not only government that has a duty to provide children with positive rights, it is a duty of parents, relatives, teachers, and all of us.

## **Robert Nozick (1938-2002)—Twentieth Century Rights**

Robert Nozick is an extreme libertarian. Extreme libertarians hold that no one has positive rights. **We only have the basic negative right to freedom from coercion** which is the right not to be forced to do things against our will. Only time we can rightfully be forced to do something against our will is when we are forced to stop coercing others.

But this extreme libertarianism fails to see that, given so much freedom for everyone, then Hobbes state of nature would seem to follow--one person exercising freedom often restricts freedom of someone else. Such conflict of rights are discussed in terms of *prima facie rights*.

## **PRIMA FACIE RIGHTS**

In legal discourse, rights are distinguished in terms of overriding rights and Prima Facie Rights. Some rights contradict, given certain circumstances, and when this arises, some rights become secondary and are then obviated (cancelled). The rights which are weaker are called Prima Facie Rights. Prima means first and facie means face. Prima facie literally means first face, as in superficial, just outward appearance. Prima facie rights are rights that appear at



first to be important until some more important right stands in its way, then the prima facie does not seem so important. Although Prima Facie Rights are mostly discussed in legal literature, they are indeed based on the notion of Prima Facie Ethical Rights.

My negative right to whatever might interfere with your right. For example, I have the right to listen to music. But if I play music loud enough, this can interfere with your right to peace and quiet. Which right wins out? We could decide by which right is more necessary to our basic needs. Do I need to listen to music? Do I need peace and quiet? Well, most everyone agrees, we need peace and quiet for well being. Music is an extra, not a need. But making this decision is not necessarily so simple. Back home (New Orleans area) music is considered necessary to life, like breathing. It is difficult to get people to buy into the peace and quiet line. Notice that I have switched from talking about ethics as what is right and wrong for everyone regardless of what their culture believes, to looking at what people agree about, and that can vary. This switch is okay because once we start talking about needs we are talking about FACTS, not just ethics. If ethics relates to facts then we start looking for facts about needs that we agree are not subjective and not just cultural. In the case of the right to listen to music, weighed against the right to peace and quiet, we find a need involved that is definite: we need to sleep. Everyone has a right to sleep at night. So if you play music at night and disturb sleep of your neighbors, you have violated their more important right to sleep at night, even in Louisiana, except during Mardi Gras, Christmas Eve, and countless town festivals.

Doing ethical rights analysis of cases is sometimes a matter of weighing conflicting rights, like music v. sleep.

Negative rights **almost** always trump positive rights. The philosophical concept that best explains why is the difference between doing nothing and taking action. Governments, in doing nothing, might not completely fulfill their duty to provide positive rights, but in taking action that violates negative rights governments put themselves in the unethical position of violating rights of innocent people. You cannot provide positive rights if it means performing actions that violate the rights of innocent people. This applies almost universally in rights theory. Every positive right is based on a negative right that a person cannot meet on their own. It is the negative right that "grounds" the ethical imperative of positive rights. It is because we have the negative right to try to get our own food, clothing, and shelter that we extend that right to positive rights, making the ethical case that when we cannot get them, someone has to give them to us. You have negative rights, and only in very special circumstances should positive rights kick in. Your negative rights arise as you reach the age of

consent: adulthood that signifies you can make logical choices about your own life and your own needs.

Would we want government to provide everything for us? Most of us would prefer to make our own choices about how we get basic necessities because we get a sense of fulfillment and worth from doing things for ourselves (exercising our negative rights) instead of having government give these to us. Free choice is the basis of rights theory. Rational adults should make their own choices.

WARNING: But **be careful not to argue that a specific negative right is more important than a positive right merely on the basis of the importance of negative rights**, because there can be circumstances where this is not so. It all depends on the rights in question and the circumstances of the case. But this will not usually be a problem, since what we find is that, in most cases, one party violates rights of an innocent party and that the violation is not mutual.

### **CONFLICT OF RIGHTS ARE NOT THE NORM**

**Conflict of rights** applies when both parties are going to violate each other's rights. When that happens, you have to decide which rights are more important. **But in cases where one party is violating the rights of someone who is innocent, then the violation of rights is not mutual. In that case, the party violating rights is going to be forfeiting their rights, period. There is no conflict of rights in such a case.**

### **GOVERNMENT DUTIES AND INNOCENT PEOPLE**

Governments have no rights. Governments are not people. Government staff are people, and as private citizens, off duty, they have rights. But as staff of government in their role as government, they have no rights. Governments only have duties: duty to serve the people they represent. This role of duty applies to police, teachers, NSA, TSA, elected officials, monarchs, and appointed officials, etc. The only right preserved even while functioning as government staff, is right to free speech, but even free speech may have limits when you are working for government.

Given rights theory, government has 2 basic duties:

1. protect negative rights
2. provide positive rights.

The role of government in terms of conflicting rights is especially important to computer ethics and negative rights. While it is true that rights often conflict, it is

also true that innocent people should not have their negative rights violated, not if they do not violate rights of others.

This becomes most important in issues of privacy and government interference. These days it almost seems that governments believe technology can and should be used in the name of right to safety. But if you do not violate safety your rights do not conflict with rights of others. Governments use prima facie rights against us, and they do so often in the name of an ethics of rights. One mistake students usually make is to assume that right to safety often conflicts with your rights to privacy or free speech or information. But, if you are innocent, you have no rights in conflict. Yes, government has the duty to provide you with safety, but this positive right to safety cannot be used as an excuse for government to violate your negative rights to privacy, not if you are innocent of any violation of rights of others. If you are INNOCENT, you are just not a threat to safety. If you are an innocent person, not going to hurt anyone, government cannot shackle you, lock you up, scan you, pat you down, just to make sure everyone is safe. They can only do this to those who threaten safety.

Human beings are individuals each with dignity & self-worth. We are not cattle being horded onto trucks, we are not bits of straw in a collective haystack that need to be prodded and inspected in order to weed out the needles in the haystack. If you are not a threat, there is no conflict between your negative rights and your safety or the safety of anyone else.

In order to violate your privacy government must have good reason to assume your guilt. Government needs to have proof that you as an individual are a threat to safety before they can start treating you like you might be a threat to safety by scanning you, reading your mail, or whatever. This is rights theory.

But how then are they to know who is meaning to cause harm if they cannot screen us first? Government does have a problem here. The solution is to find non-invasive ways to screen us, etc. Government must find some other way to provide you with safety, they cannot violate the rights of innocent people in order to give you safety. At least they cannot do so in the name of an ethics of rights.

## **PRIVACY VS PROPERTY**

Often, especially within recent laws, there has been a tendency to view any issues related to individual persons as issues of privacy, such as stated in the Electronic Communications Privacy Act.

### **PRIVACY**

But privacy is a specific concept with a clear definition that is not as broad as laws and unreflective thinking assume. **Privacy** is the setting of boundaries whereby you include & exclude other people from interacting with you. That interaction can take different forms, and in computer ethics, it is usually the interaction of communicating. Privacy is always a negative right. Nobody can decide for you when & how you should limit or include others in your interactions, not if you are innocent.

Your data is private sometimes and sometimes not. It is a mistake in reasoning to assume that since your personal data might be made public, then there is no ethical problem if your data is being used without your permission. This thinking fails to recognize the distinction between property & privacy.

## PROPERTY

Your personal data is always your property and you must be the one to decide what happens to your data. Using your data without your permission might not be a violation of privacy, it might be that there are no people disrupting your choice of who interacts with you. But your data is still your data. You own your data. Your data is your property. You are the one who decides who uses it & for what purpose. Use of your data without your permission is a violation of your property rights. It might also be a violation of your right to privacy, but it is important to keep in mind the important distinction between digital privacy & digital property.

## PRIVACY VS ANONYMITY

Again, privacy is your choice to create a boundary in which you include or exclude others. What does this mean? Well, if you include your friend Jeff in a private meal with you, just you and Jeff, then you have excluded your friend Ashley. If you are alone in your bedroom you exclude everyone. You are very private. Now, suppose you are walking around in public, say at Starbucks. How much privacy do you get? None, you are out in public.

## ANONYMITY

Right to **Anonymity** is the right to be a nameless face in a crowd. It is in a public setting that anonymity can be ethically significant. When dealing with cases like TOR use, always keep in mind the scenario of walking around outside --you are out in public, if you are not a celebrity and not a criminal or public figure, then you get to be a nameless face. You do not have to give out who you are to strangers on the street. But if you go home, walk into your

bedroom, being nameless in the privacy of your room makes no sense, it just is not a factor because you are in private. **If you have privacy, you do not need anonymity.** It just is too much to demand. Who needs to be anonymous while alone in the privacy of their own bedroom? To need anonymity in that case, you likely have something bad that you are trying to hide. Now, in the case of Facebook and in many other cases, especially cases of government involvement, promises of privacy might not be adequately met. In those cases, need for anonymity might not be too much to ask. A non-tech example: even in the “privacy” of her home, a woman might need anonymity in order to hide from a stalker. Why? Because her privacy is likely to be invaded, even as she sits alone in her private space. If your right to privacy cannot be secured, and you are innocent, then you have the right to anonymity.

## **CONTRACTS (the TOS)**

**Here is the problem with most website Terms of Service (TOS) contracts:**

Imagine you are invited to supper next door. You knock, are greeted with the offer of a deal, "you eat here tonight, you agree we can cut off your arm after supper". Well, that's a TOS. Is it binding, legally or ethically? No it is not, because **ethically, they cannot ask you that!** Legally, would it hold up in court? Of course not, cutting off your arm is illegal and doing so in exchange for anything, certainly in exchange for supper, is illegal; they cannot ask you that.

Analogously, companies cannot make you agree to let them do whatever they wish with your data. They cannot ask you that. It is your data, you must control it. It is also illegal, and it should be illegal.

So, then why do most tech companies and most websites have unethical & illegal TOS?

### **3 REASONS FOR AN ILLEGAL & UNETHICAL TOS:**

1. Most people do not know the contract is not legally binding if it is illegal to begin with. So when you complain they say to you "well, you signed a contract agreeing to this, see it here." And most people, being unaware, just accept that as the last word.
2. In the USA, signing of a contract, no matter how abusive or illegal are its terms, will get the creating party a day in court & a hearing. Well, they cannot win if the clause is illegal. They know they cannot win,. But they have legal teams, money, etc. to litigate forever, users do not.

3. Except for France, nobody on Earth punishes creators of illegal contracts. Companies can ask for control of your data, your first born, your eye or arm & leg & nothing ever happens to them. No fines, disbarment, nothing.

The worse companies for abusive TOS? Insurance companies. They put illegal clauses in contracts and use that to deny coverage & this works so well for them: they get to delay until the patient dies. Nifty!

So, be careful, an appeal to signed contracts usually does not count, because, as the French claim, those contracts are usually abusive: one-sided and coercive.

## **RIGHTS (ARGUMENT Section of OUTLINE)**

1. **DEFINE RIGHTS: RIGHTS are a justified claim to a certain kind of treatment from others, to help from others or to be left alone by others. (just copy and paste definition)**
2. State very generally, in one sentence, if rights are violated
3. List ALL groups or individuals whose rights are or might be involved (a sentence)
4. Write a paragraph for each group (or each individual) explaining how their rights are possibly involved. Explain the importance of that right.
5. Explain in a separate paragraph which rights are violated, if any.
6. Explain in a separate paragraph which rights conflict, if any do
7. If there are conflicting rights, weigh the conflicting rights of the groups: which are most important?