

## The Morality of Freedom

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anything of value a right. Both dangers result from the fact that a philosophical  
G H I L Q L W L R Q R I † D U L J K W ‡ O L N H W K R V H R I F R H U F L R Q D X W K R U L  
not an explanation of the ordinary meaning of a term. It follows the usage of  
writers on law, politics and morality who typically use the term to refer to a  
subclass of all the cases to which it can be applied with linguistic propriety.

Philosophical definitions of rights<sup>1</sup> attempt to capture the way the term is used  
in legal, political and moral writing and discourse. They both explain the existing  
tradition of moral and political debate and declare the author's intention of  
carrying on the debate within the boundaries of that tradition. At the same time  
they further that debate by singling (p.166) out certain features of rights, as  
traditionally understood, for special attention, on the grounds that they are the  
features which best explain the role of rights in moral, political, and legal  
discourse. It follows that while a philosophical definition may well be based on a  
particular moral or political theory (the theory dictates which features of rights,  
traditionally understood, best explain their role in political, legal and moral  
discourse), it should not make that theory the only one which recognizes rights.  
To do so is to try to win by verbal legislation. A successful philosophical  
definition of rights illuminates a tradition of political and moral discourse in  
which different theories offer incompatible views as to what rights there are and  
why. The definition may advance the case of one such theory, but if successful it  
explains and illuminates all. In this spirit I shall first propose a definition of  
rights and then explain various features of the definition and criticise some  
alternative definitions.

Definition:



entailing the existence of the core right. But not every right thus entailed is a derivative one. The premisses must also provide a justification for the existence of the derivative right (and not merely evidence or even proof of its existence). To do so their truth must be capable of being established without (p.169) relying on the truth of the conclusion. An example may illustrate the point.

Let us assume that I own a whole street because I bought (in separate transactions) all its houses. My ownership of a house in the street does not derive from my ownership of the street as a whole, even though the statement that I own a house in the street is entailed by the statement that I own the street. For in attempting to provide a normative justification for my rights I have to refer to the individual transactions by which I acquired the houses. Therefore my right in the street derives from my rights in the houses and not the other way round. Had I inherited the whole street from my grandfather the situation would have been reversed.

Without grasping the relation between core and derivative rights one is liable to fall into confusion. My right to walk on my hands is not directly based on an interest served either by my doing so or by others having duties not to stop me. It is based on my interest in being free to do as I wish, on which my general right to personal liberty is directly based. The right to walk on my hands is one instance of the general right to personal liberty. The right to personal liberty is the core right from which the other derives. Similarly my right to make the previous statement is a derivative of the core right of free speech, and my right to spoil the cigarette I am holding at the moment derives from my ownership in LW DQG VR RQ 2IWHQ ULJKW~KROGHUV KDYH D GLUHFW LQWHU have derivative rights. But those do not always ground their rights. A right is based on the interest which figures essentially in the justification of the statement that the right exists. The interest relates directly to the core right and indirectly to its derivatives. The relation of core and derivative rights is not that of entailment, but of the order of justification. The fact that a statement that everyone has a right to freedom of expression appears to entail the statement that everyone has a right to free political expression does not establish that the first is the core right and the second its derivative. It may well be that freedom of political speech is justified by considerations which do not apply to other kinds of speech. If it is also the case that, while separate independent considerations justify freedom of commercial (p.170) speech, and others still freedom of artistic expression, scientific and academic communications, etc., there are no general considerations which apply to all of the protected areas of speech, then the general right to freedom of expression is a derivative right. It is a mere generalization from the existence of several independent core rights.

Furthermore, a general right statement does not entail those statements of particular rights which are instances of it. I may have a right to free speech without having a right to libel people. In matters of libel, the right to free





is to be binding. And there is the right conferred on the promisee by the promise. I will examine them in that order.

The right to promise is based on the promisor's interest to be able to forge special bonds with other people. <sup>1</sup> The right is qualified. Not everyone has it. Small children and some mentally deranged people lack it. Furthermore, if it is not permissible to have bonds based on immorality, one's right to promise does not include the right to promise to perform immoral acts. The right to promise is no doubt further qualified. Since we are not here concerned with any of these qualifications I will from now on disregard them.

Those who assign sufficient importance to the interest people have in being able to impose on themselves obligations to other people as a means of creating special bonds with other people believe in a right to promise. But why is it a right? The interest on which it is based validates the promising principle, namely:

If a person communicates an intention to undertake by that very act of communication a certain obligation then he has that obligation.

The promising principle establishes that if we promise we are obligated to act as we promised. It also establishes a present obligation to keep our promises, i.e. we are obligated to perform action X, if we promised to perform X. This is a conditional obligation. The condition is an act of the promisor and his obligation is conditional on his action because it is desirable that he should be able to bind himself if he so wishes. It follows that people's interest in being able to bind themselves is the basis of a power to promise which they (p.174) possess and of an obligation to keep promises they make. But neither the power nor the obligation point to a right to promise.

The right exists because the very same interest on which the power to promise and the duty to keep promises are based is also the ground for holding others to be subject to a duty not to interfere with one's promising. The duty requires one not to prevent a person from promising (e.g. by denying others the opportunity to promise to other people).

normative bonds with others. That is why they coexist, and one has the power to promise if and only if one has the right to do so.

The right to make a particular promise (e.g., to visit my aunt next weekend) is a derivative right of the general right to promise. One such derivative right is the right to make a conditional promise. Two kinds of conditional promises are of interest here:

) LUVW D SURPLVH PDGH FRQGLWLRQDO RQ DQ DFWLRQ E\ WKH  
JLYH \RX WHQ SRXQGV LI \RX JLYH PH WKH ERRN‡

Second (which is in fact a special case of the above), a promise made

FRQGLWLRQDO RQ D SURPLVH WR EH JLYHQ E\ WKH SURPLVHH  
WHQ SRXQGV LI \RX SURPLVH WR JLYH PH WKH ERRN‡

(p.175) Whenever such a promise is made and the condition is fulfilled, there is an agreement between the promisor and the promisee. The right to make such promises is therefore a right to enter into agreements. There are other ways of making agreements but their analysis does not matter for our purpose.

So far we have discussed the right to promise. The right which the promise confers on the promisee does not derive from the right to promise which is a right of the promisor



promise, and not only those performance of which is to the advantage of the promisee, creates a right in the promisee.

(p.176) specific

## 6. Capacity for Rights

to look after them while they are away on holiday. My gardener has a duty to look after my garden because his contract of employment says so. Some scientists have a duty to preserve certain rare species of plants because they are the only source of a medicine for a rare and fatal disease. In all these cases the people who have duties to act in certain ways have them because it benefits plants. Yet in none of them is it true that the plants have a right to the benefits. The reason is that in all these cases the benefit is to be conferred on a thing whose existence and prosperity are not of ultimate value.



F H U W D L Q N L Q G L H W K D W D Q D V S H F W R I K L V Z H O O ~ E H L Q J L V D  
another person. The specific role of rights in practical thinking is, therefore, the  
grounding of duties in the interests of other beings.

Rights ground requirements for action in the interest of other beings. They  
therefore assume special importance in individualistic moral thinking. But belief  
in the existence of rights does not commit one to individualism. States,

F R U S R U D W L R Q V D Q G J U R X S V P D \ E H U L J K W ~ K R O G H U V % D Q N V K D

MXVWLI\ LW RQO\ E\ UHIHUFH WR VRPH RWKHU LQWHUHVWV RI  
importance of intermediate steps like rights, duties, rules and the like to a  
common culture explains and justifies the practice of referring to them as  
reasons in their own right, albeit not ultimate reasons.

An interest is sufficient to base a right on if and only if there is a sound  
argument of which the conclusion is that a certain right exists and among its  
QRQ ~ UHGXQGDQW SUHPLVVHV LV D VWDWHPHQW RI VRPH LQWHU  
other premises supplying grounds for attributing to it the required importance,  
or for holding it to be relevant to a particular person or class of persons so that  
WKH\ UDWKHU WKDQ RWKHUV DUH REOLJDWHG WR WKH ULJKW ~ KI  
be sufficient by themselves to entail that if there are no contrary considerations  
then the individuals concerned have the right. To these premisses one needs to  
add others stating or establishing that these grounds are not altogether defeated  
by (p.182) conflicting reasons. <sup>1</sup> Together they establish the existence of the  
right.

2QH UHVXOW RI WKH IDFW WKDW D ULJKW H[LVV ZKHUH WKH LQ  
are sufficient to hold another to be obligated should be noted. Sometimes the  
fact that an action will serve someone's interest, while being a reason for doing  
it, is not sufficient to establish a duty to do it. Different moral theories differ on  
this point. Some utilitarian theories deny that there is a useful distinction  
between moral reasons for action and duties. Some moral views confine duties  
to matters affecting human needs, or human dignity, etc. Be that as it may, it is  
in principle possible that a person should not have a right that others shall act to  
promote a certain interest of his simply on account of the fact that while they  
should do so, while it is praiseworthy or virtuous of them if they do, they have no  
obligation so to act.

These considerations help to explain how it is that even if a person has a right,  
not everyone is necessarily under an obligation to do whatever will promote the  
interest on which it is based. Rights are held against certain persons. Some  
rights are held against the world at large, i.e. against all persons or against all  
with certain specified exceptions. Thus the right to personal security is the  
ground of a duty on everyone not to assault, imprison or rape a person. Other  
rights are held against certain persons in virtue of a special relation they have to  
WKH ULJKW ~ KROGHU 7KXV FKLOGUHQ KDYH D ULJKW WR EH PDLQ  
The reasons many rights are against some definite people are varied. Sometimes  
the interests on which they are based can be satisfied only by some people and  
not by others. For example, since contractual rights are based on an interest in  
being able to create special relations, they give rise to rights against other  
parties to the agreement as they are the only ones who can satisfy that interest  
on that occasion. In other cases, even though (p.183) many can satisfy the

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prima facie ground for the existence of a particular right in circumstances to which it applies. Rights can conflict with other rights or with other duties, but if  
WKH FRQIOLFWLQJ FRQVLGHUDWLRQV GHIHDW WKH ULJKW WKH  
extensive in their scope. <sup>1</sup>

These remarks help explain one sense in which rights ground duties. Two further points are, however, crucial to the understanding of the priority of rights to the duties which are based on them (and not all duties are based on rights). First, one may know of the existence of a right and of the reasons for it without knowing who is bound by duties based on it or what precisely are these duties. A person may know that every child has a right to education. He will, therefore, know that there are duties, conditional or unconditional, to provide children with education. But he may have no view (p.185) on who has the duty. This question involves principles of responsibility. It is part of the function of such principles to GHWHUPLQH WKH RUGHU RI UHVSRQVLELOLW\ RI GLIIHUHQW SHU  
Does the primary responsibility rest with the parents, with the community stepping in only if they cannot or will not meet their obligations? Or does the primary responsibility rest with the community? The issue is of gLrresponsibi8.Tj 0 0 0

provide free education to all. And yet one may be in a position to assert that there is a right to education without knowing the solution to such a problem, or to whether the communal responsibility is local or national, whether Tmnextends

content of the right to education is incomplete. But this merely means that he does not know all the tylications of the right to education (given other true premisses). It does not mean that he does not understand the statement that

education, ims point and the reasons for it, which helps, together with other premisses, to establish such itylications9.99 a duty is based on a right, on the other hand, then imntrivially follows that one cannot know the reasons for it

SURWHFWV LV VXIILFLHQW WR EH WKH JURXQG RI D GXW\,ZKLFK  
right).

The second point to bear in mind is that the tylications of a right, such as the right to education, and the duties it grounds, depend on additional premisses

true in principle that the future cannot be entirely known in advhe50, then there may be future circumstances which were not predicted and which, given the right to education, give rise to a new duty which was not predicted in advhe509.

education are in principle unpredictable0. Because of this rights can be ascribed





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Some have suggested that rights are distinctive in that, while being based on individual interests, they are given greater weight than is due to that interest. But if rights are given greater weight than is warranted by the interest they protect considered in itself, this is presumably due to considerations which do considerations do exist. I may have a moral reason against killing a person who deserves to die, or who wishes me to kill him and whose suffering will make his be the wrong person for the job, or I may refuse to defile my hands with his blood, or be a person whose life is committed to ways of (p.188) relating to other people which is inconsistent with killing, even a justified killing, or perhaps others may misinterpret my action with, given my position in life, undesirable consequences.

Many other, and more subtle, considerations may be adduced in such cases. They show that we have reasons to act in ways which benefit others, and reasons which depend on the fact that our action (or inaction) will benefit the other, but where the fundamental concern reflected in the reasons is not for the My definition of rights allows for such cases, provided that they amount to duties, and not merely to ordinary reasons for action. But it would be wrong to elevate them into a universal rule and claim that rights exist only when such considerations apply. Moreover, emphasizing the importance of these, generally marginal, factors obscures the fundamental role of rights in practical reasoning another subject to a duty.

holder and those of others misses a consideration which is central to the or express respect for him as a person. Rights, one may say, are based neither on WKH ULJKW ~KROGHUV LQWHUHVW QRU RQ WKDW RI RWKHUV 5D holders' status as persons and the respect owed to them in recognition of that fact.

This may be a verbal disagreement. For it may be dissolved by responding that a person has an interest in being respected as a person. That shows that rights grounded in respect are based on interests. Whether or not the response dissolves the disagreement, it seems to me that people have such an interest. Yet logically it is a special kind of interest. It is not just one interest people have alongside others. Respecting a person consists in giving appropriate weight to his interest. The interest in being respected is but an element of the interest one has in one's interest. If respecting people is giving proper weight to their interests, then clearly we respect people by respecting their rights. But this is so precisely because their rights are based on their interests whose (p.189) claim

on us is sufficient to subject us to duties to respect them. <sup>1</sup> Since we respect others by giving proper weight to their interests, neither the duty of respect nor the interest in being respected can show that rights deserve greater weight than the interest they are based on.

Still, is it not open to argument that while respect for a person consists in giving due weight to his interest, the reasons for respecting him need not be to serve person oneself. Such a duty may defy consequentialist interpretation. On this interpretation it is not so much that rights have a force greater than the one justified by the interest they serve. At bottom their force is independent of that interest. That John's action will serve Judy's interest shows that it is an action which respects Judy. But John is obligated to perform it not in order to promote or defend Judy's interest. He may have a separate, independent reason to do that. The reason, the only one, on which Judy's right is based is that John, as a person, owes respect to all other persons.

Considerations of this kind do indeed exist, and will be discussed in the next chapter as well as in Part Four. They are what are traditionally known as deontological considerations. They have always been regarded, by those who believe in their validity, as establishing the existence of duties, rather than of rights. That attitude is captured and reflected in the explanation of rights advanced here. According to it rights must be based on the fact that the interest of the right holder is sufficient reason to hold another to be subject to a duty. The deontological view sketched above does not regard the interest of the argument for the existence of a duty with no corresponding right.

I believe that, whatever the general case for deontological duties, there are no good grounds for conceiving the duty of respect for persons along the lines suggested in the preceding two paragraphs. It is, as was indicated before, the duty to give due weight to the interests of persons. And it is grounded on the to rights: it serves as the basis of people's right that others shall give due weight to their interest. Being a very abstract right, nothing very concrete about how people should be treated follows from it without additional premisses. This explains why it is invoked not as a claim for any specific benefit, but as an flavour.

Not surprisingly, those who see rights as grounded on respect for persons deny that respect for persons consists in giving due weight to their interests. The reason is clear. Combining the claim that respect for persons consists in having due regard for their interests with the claim that rights rest on respect for

persons leads to the conclusion that a person has a right that his interests will be duly respected. There is no apparent way by which this line of thought could explain the distinction between a person's interests which are protected by rights and those which are not. Instead, one may claim that respect for persons consists in respecting some of their interests only. In particular, it may be said, it consists in respecting their interest in being free to choose do and to live as they like. This may be thought to explain why some interests people have are not protected by rights. Rights protect not their interests generally but only their interest in freedom. The capacity to be free, to decide freely the course of their own lives, is what makes a person. Respecting people as people consists in giving due weight to their interest in having and exercising that capacity. On this view respect for people consists in respecting their interest to enjoy personal autonomy.

This argument calls for careful scrutiny. The claim, made above, that respecting people means giving proper weight to their interests is not a devious way to justify wholesale paternalism, at least not for those who believe in the value (p. 191) of personal autonomy. Since, as will be argued in Part Four SHRSOH V ZHOO ~ being is promoted by having an autonomous life, it is in their interest not to be subjected to the kind of oppressive paternalism which consists in running their lives for them allegedly in their own best interest. Therefore, the view that SHUVRQDO DXWRQRP\ LV DQ LPSRUWDQW HOHPHQW LQ SHRSOH V respect for people if understood as giving due consideration to all their interests leads to respect for their autonomy. It is true that on this view of respect it does not serve as a foundation of a theory of rights. But this is as it should be since one can, and people often do, show disrespect to others, including disrespect which amounts to denying their status as persons, by acts which do not violate rights. Each one of us can think of appropriate instances of insulting behaviour which illustrate the point.

, W PD\ EH FODLPHG WKDW E\ GHILQLQJ ULJKWV DV EDVHG RQ WK LQGLYLGXDOV , KDYH UXOHG RXW RI FRXUW WKH YLHZ WKDW PR definition rights are not fundamental but derive from interests. If true this is a damaging criticism. As explained in the first section the account of rights aims to make sense rather than nonsense of rival theories about the role of rights in morality. The view that rights are fundamental can, however, be explained in terms of the proposed definition.

All rights are based on interests. Some rights may be based on an interest in having those same rights. <sup>1</sup> No vicious circularity is involved in the claim that X has a certain right because it is his interest to have it. It is no more circular than the statement that Jack loves Jill because she needs his love. In many cases an individual's interest in a right does not justify holding him to have it unless it VHUYHV VRPH RWKHU ZRUWK~ZKLOH LQWHUHVW RI KLV RU RI RV







which can be served by the possession of the right. Since an interest in having a right can be served by having it, it can be the foundation of such a right.