

Rights based ethics (summary of main points covered in lecture)

Rights are claims against others (whether individuals or social entities) to be treated in certain ways. Rights claims generate correlative duties on the part of others. There are two basic divisions of rights:

1. Natural and conventional -- natural rights pertain to us by virtue of our humanity; as such they apply to all persons. Natural rights are commonly called moral rights. Conventional rights are created by humans, generally within the context of social and political organizations.
2. Negative and positive -- negative rights impose duties of noninterference on others. Thus my right to life as a negative right is a right not be killed. positive rights impose duties of assistance on others. For example, welfare rights impose on the state the duty to assist those who cannot provide for themselves.
3. So, there are four possible categories of rights: natural negative, natural positive, conventional negative, and conventional positive. No one doubts the existence of the latter two categories. There is controversy about the existence of natural rights, and much greater controversy about whether there are natural positive rights.
4. The existence of natural rights is an important matter since if such rights exists they provide a basis for supporting or challenging existing the presence or absence of conventional rights within particular societies. Rights are claims against others (whether individuals or social entities) to be treated in certain ways. Rights claims generate correlative duties on the part of others. There are two basic divisions of rights.
5. Moral rights are often called asserted to have priority over other sorts of moral claims. That is, the duties they impose take preference over other duties or actions people might have except when there are duties imposed because of someone else's rights.
6. Remember the principle that 'ought implies can.' People cannot have an obligation to do something that it is impossible for them to do. Why? an obligation on me to do X asserts that I must choose X among the possibilities that I have. If it is not possible for me to choose X then I cannot be obligated to choose it. So, I can have a positive right to food only if there are others for whom it is possible to provide food. If I am in the middle of a desert, have run out of food with other members of an expedition, and no one has any way of obtaining food, then none of us has a right to food as a claim against the others. So too, I only have rights against individuals who can exercise freedom and rationality. I might have a negative natural right to live with reference to other people swimming in the ocean, but I don't have any right to live with reference to the shark who is chasing me.
7. The basis of natural rights. Natural rights are commonly regarded as universal rights: that is, they are supposed to apply to all humans and, for many moral theorists, and only to humans. But what is it about humans that provides the basis for such rights. We looked at three such bases: that we have them as endowed by our creator; we have them based upon actual characteristics of humans; we have them on the basis of our potentialities and capacities.

Note the following possibilities:

1. actually having a property and exercising it ('normal' adult human beings while awake actually exercise freedom and rationality)
2. having the developed capacity of a property but not currently exercising it (a 'normal' adult human while sleeping or in a coma)
3. having the capacity for a property which is not developed or exercised ('normal' human neonates have the capacity for rationality but it is not developed sufficiently to be exercised.
4. not having the capacity for a property.
 - a. The capacity is lacking (the capacity for rationality is lacking in an anencephalic baby that is born without a brain.)
 - b. having lost the capacity for a property that was formerly present and exercised (advanced Alzheimer's patients or those in a persistently vegetative state have evidently lost the capacity for exercising freedom and rationality given that these diseases destroy the parts of the brains that carry out these functions).

As Oazr points out, if we choose actual rationality or the exercise of freedom as the basis for having rights, then we simply cannot extend moral rights to all humans (everyone in cat. 2-4 would be eliminated from having moral rights). Indeed, depending on what we mean by rationality, we may have to include some non-humans (e.g., higher primates exhibit some capacity for rational behavior).

If we choose the capacity for rationality as the basis for having rights, we include many more humans (e.g., all 'normal' humans from the moment of conception, but we still do not include all humans (e.g., those in category 4). Again, depending upon what is meant by rationality, we still may not be able to limit moral rights only to humans. The problem with basing moral rights on the capacity for a property is why should merely possessing the capacity for a property generate actual rather than moral rights?

If we want to insist that all humans have natural moral rights (including those in cat. 4), then it seems we have to hold that there is an immaterial dimension to human beings that is the locus of our having rights and that this immaterial dimension persists undiminished by what happens to the body/brain. So, one might argue that all humans have a rational soul. Our having rights is grounded in having such a soul, the soul persists in us as long as we live (and may survive death) and is not affected in morally relevant ways by what happens to the body as in case 4. This view of course requires philosophical justification. It is commonly used as a basis to extend moral rights to all and only human beings.

Some argue that rationality is too narrow a basis for rights; that we need to look at the capacity for pleasure and pain. So, some would argue it is simply wrong to torture a dog or kill it for no good reason since that inflicts unjustifiable suffering on the dog. Why? because a dog has some right to life, say not to be grossly interfered with.

5. Negative and positive natural rights. Some, e.g., libertarians, hold that the only natural rights we have are negative. That is, the rights to 'life, liberty, and happiness' are only 'liberty rights' not to be interfered with by others. On this view, we have no obligations to assist others unless we have made a contract with them to provide assistance. So, if someone is starving to death, we have no obligation to assist them unless we have made some contract with them to provide food. (We may provide food if we feel like it, but this is a supererogatory action -- it may be a good thing to do, but we have not acted immorally if we do not provide the food.)

Positive natural rights are often called welfare rights since they impose duties to be provided with certain things. In this case, a right to life imposes a duty on those who can provide food to a starving person to do so.