Taking a Social Approach to Rights

1. What’s a moral right?
2. How does ignorance affect rights?
3. Some problems with the usual accounts
4. A new theory
1. What is a Moral Right?

What are we theorizing about?
1. What is a Moral Right?

Hohfeld’s Classification

Liberties

Claims

Powers

- Unjustly attacking
- Gifting
- Commanding
- Promising
- Consenting

Alex’s claim-right

“You may borrow my umbrella”

Bea’s correlative duty

ALEX

BEA

What are we theorizing about?
1. What is a Moral Right?

Steiner’s 6 Features of Rights

1. Rights are constituted by rules.

2. Rights signify a bilateral normative relation between those who hold them (subjects) and those against whom they are held (objects).

3. These relations entail the presence or absence of prescribed encumbrances on the conduct of objects.

4. These encumbrances consist either in objects’ duties, or in their lack of capacity to alter those or other encumbrances.

5. Rights are exercisable.

6. This exercisability consists in the capacity to control objects’ encumbrances by either extinguishing or enforcing them.

Constitutive Roles of Rights

“rights are essentially about who is owed what by whom. [...] rights are concerned with interpersonal distribution [...] or more specifically the ways persons’ conduct can affect that distribution.”

“Theories of moral rights advance views about how specific other persons’ valued services should be interpersonally distributed by enforceable systems of rules.”

- **Security**: rights function to secure moral goods for rights-holders.

- **Distributive Fairness**: the demands of objective rights mark a fair (just) distribution of those moral goods.
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“rights are essentially about who is owed what by whom.”

[Steiner, 460]
Content of Claim Rights: What Grounds Them?

When does A have a right to B’s x-ing?

Interest/benefit theory

The fulfillment of the claim can generally be expected to serve the holder’s important interests.

Will/choice theory

Whether the claim is fulfilled or waived is properly subject to the holder’s authority or choice.
The “primacy” of rights

Lots of interesting questions we could ask:

• Do rights “trump” other considerations?
• Can the demands of rights conflict?
• Is it permissible to infringe less stringent rights in order to protect more stringent rights?

But I want to focus on a different issue.
2. How does ignorance affect rights?

The motivating puzzle and two leading theories
1. B must decide whether to do some action X.

2. B is in a position to know that Xing would infringe A’s rights, unless A has exercised a particular normative power.

3. The best available evidence leaves her uncertain whether A has intentionally exercised that power.

**Normative Opacity Problems**

**what do the duty-bound owe to the rights-holders?**
2. How does ignorance affect rights?

### Opacity Problems for One

Which cup should you pick?

<table>
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<tr>
<th>LEFT</th>
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The motivating puzzle and two leading theories
2. How does ignorance affect rights?

The motivating puzzle and two leading theories

**Theory 1: Evidence-Relative (Subjectivist*)**

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“One’s right to life, and, indeed, one’s rights in general are hostage not only to the abilities but also to the evidence possessed by those against whom one’s rights are held.”

2. How does ignorance affect rights?

Theory 2: Outcome-Relative (Objectivist*)

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“Of course the agents are not at fault in these cases if they do proceed. But they will infringe a claim if they know they will cause these outcomes to come about, and nevertheless proceed anyway. And how could their victims have a claim against them that they not proceed-being-at-fault-in-doing-so, if they do not have a claim that they (all simply) not proceed?”

- Judith Jarvis Thomson, Realm of Rights (1990), p. 233
3. Some problems with the usual accounts

The roles of rights
And how risk pools
3. Some problems with the usual accounts

**Constitutive Roles of Rights**

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- **Guidance**: rights provide reasons for action that agents can appreciate and use for deliberation before knowing what the specific downstream consequences of their actions will be.

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Misleading evidence is disproportionately likely to affect members of social groups stereotyped as ‘dangerous’ or ‘consenting’
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Taking the Social Approach
Opacity Problems for Two

What does B owe it to A to do?

For more, see:
David Lewis, *Convention*
Brian Skyrms, *Signals and Evolution of the Social Contract*
The Social Approach
What does B owe it to A to do? Applied to Consent

For more, see:
Renee Jorgensen Bolinger, 'Moral Risk and Communicating Consent', Philosophy & Public Affairs
'The Moral Grounds of Reasonably Mistaken Self-Defense', Philosophy & Phenomenological Research
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Taking the Social Approach

Theory 3: The Social Approach

Depends on having public, avoidable signals for all normative powers.

Insulates A from B’s other misleading evidence… *if B is held responsible* for their errors.
“By attending to the general characteristics of moral rights, we can learn something about the demands of justice—about how the legal realm must be in order to be just.”

[Steiner, 460]

**Wrapping up**

**what do the duty-bound owe to the rights-holders?**

1. Rights are constituted by rules.
2. Rights are exercisable.

**Evidence-Relative**

Choose your best evidence-relative **prospect** for A

**Outcome-Relative**

Secure the optimal **outcome** for A

**Social Approach**

Do your part in an optimizing **coordination norm**: follow A’s signals