Oxford Handbooks Online

Moral Rights

Hillel Steiner

The Oxford Handbook of Ethical Theory
Edited by David Copp

Print Publication Date: Jun 2007 Subject: Philosophy, Moral Philosophy
Online Publication Date: Sep 2009 DOI: 10.1093/oxfordhb/9780195325911.003.0017

Abstract and Keywords

One of the central goals of this article is to show what would be lost in a moral theory that failed to recognize claim-rights. Theories of *moral* rights are inherently theories about what the basic content of those legal rules *should* be: Their accounts have constitutional reference. A standard form of complaint against a legal rule is that it fails to advance or protect persons' moral rights—it fails to be *just*—whereas its failure to satisfy other moral requirements, for example, benevolence, is not commonly seen as being equally damning. By attending to the general characteristics of moral rights, one can learn something about the demands of justice—about how the legal realm must be in order to be just. These general characteristics inhabit different levels of generality and, not surprisingly, the contestedness of claims advanced at each such level varies inversely with the degree of generality it reflects.

Keywords: moral theory, claim-rights, moral rights, moral requirements, justice

1. “Nonsense upon Stilts”?

Does morality have to contain rights? Most accounts of morality present it as fundamentally concerned with the quality of persons' intentions in acting and/or the qualities of the reasonably foreseeable consequences of their actions. Neither of these considerations necessarily signifies a role for rights in our moral thinking. The view that morally desirable actions are either ones motivated by good intentions, or ones presumed likely to secure desirable outcomes, in no way implies that such actions include respect for others' rights. It is entirely consistent with this view that others might not have rights

or, indeed, that there might not be any others. To paraphrase a recent writer, “[t]here might not have been moral rights” (Coyle, 2002, p. 21).

For rights are essentially about who is owed what by whom. They presuppose the presence of at least two persons and, moreover, persons who can interact with one another: that is, whose actions can affect one another's well-being or freedom. In this sense, rights are concerned with *interpersonal distribution*—the interpersonal distribution of valued things or, more specifically, the ways persons' conduct can affect that distribution.

And yet, even if morality does reflect a concern for such interpersonal distribution, that would still be insufficient grounds for claiming that rights occupy a fundamental position in morality. This, because such a concern might be a purely instrumental one: Conduct that is respectful of persons' rights might simply (p. 460) be the best *means* for acknowledging the moral status of those persons, or for securing independently desirable outcomes of action. The interpersonal distribution ordained by a set of rights might thus lack any intrinsic moral desirability.

This, indeed, is Bentham's view of the matter, as expressed in his famous dismissal of *natural rights* as “nonsense upon stilts.” For him and many others, the idea of moral rights is strictly superfluous, even pernicious. Rights can register no distinctive set of moral demands and, hence, the highly structured logic of rights language is appropriately confined to describing the design of legal rules and institutions (see Waldron, 1987).

I believe that Bentham is mistaken, and that he is led to this erroneous view of the concept of moral rights by several aspects of his utilitarianism. More will be said later, by way of explanation and justification for this claim. But, for now, it is equally important to note that Bentham is correct in affirming both the highly structured form of rights language and its applicability to the realm of law.[1] For what is distinctive of that realm is that it is one of enforceable rules: Rules that assign enforceable duties and that render persons liable to that enforcement. Correspondingly, sets of rights determine who is owed such duties and who is empowered to secure their enforcement.

Theories of *moral* rights are inherently theories about what the basic content of those legal rules *should* be: Their accounts have constitutional reference. A standard form of complaint against a legal rule is that it fails to advance or protect persons' moral rights—it fails to be *just*—whereas its failure to satisfy other moral requirements, for example, benevolence, is not commonly seen as being equally damning. While we do not expect legal systems to enforce generosity, we do expect them to uphold our moral rights. Implicitly or explicitly, then, theories of moral rights advance views about how specific other persons' valued services[2] should be interpersonally distributed by enforceable systems of rules. We could do worse than to think of rights as parcels of such services, with the morally prescribed contents and destinations of those parcels being determined by principles of justice. Moral rights are, so to speak, the instantiating progeny of justice.

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.

These general characteristics inhabit different levels of generality and, not surprisingly, the contestedness of claims advanced at each such level varies inversely with the degree of generality it reflects. Most general—least contested—are accounts concerning the logical *structure* of rights. Next come theories about the broad *content* of rights. And then we encounter debates about the *status* of rights in our moral thinking. Rival answers to content and status questions have a very direct bearing on such familiar issues as those concerning who or what can be a right-holder, whether moral rights can conflict with one another, whether moral rights must be permissibly enforceable, and whether there are positive as (p. 461) well as negative moral rights. It therefore seems sensible to proceed by looking at each of these levels in turn, and to start with the most general one.

2. The Structure of Rights

There are at least six features that have been attributed to rights or presupposed about them in virtually all legal and moral discussions of rights.

1. Rights are constituted by rules. (The rules constituting *moral* rights are standardly taken to be those of *justice*.)
2. Rights signify a bilateral normative relation between those who hold them (their *subjects*) and those against whom they are held (their *objects*).
3. These relations entail the presence or absence of prescribed encumbrances on the conduct (performances and forbearances) 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 them or enforcing them.

The leading systematic incorporation of these features, into an analytical schema of deontic relationships, is due to Wesley N. Hohfeld (1919). Complaining of the imprecision with which both lawyers and the general public have tended to use the word “rights” when referring to the conduct-constraining implications of legal rules, Hohfeld distinguished no fewer than four quite different entitlements, any one of which might be held by persons commonly and indiscriminately described as right-holders: claims, liberties, powers, and immunities. Holders of any one of these entitlements are placed, by the rules constituting them, in certain bilateral relations to specifiable other persons. And these other persons thereby hold correlatively entailed encumbrances with regard to the conduct governed by those rules.

Only a brief rehearsal of the basic aspects of the Hohfeldian classification of prescriptive relations will be needed here. Among the more recent analytical discussions of it, those supplied by Wellman (1985, chs. 1, 2), Sumner (1987, ch. 2), and Kramer (1998, pp. 7–60) are especially illuminating and repay careful study.[3] The reason why this classification is important and not restricted in its interest to the technical concerns of lawyers is that only some of these positions (or (p. 462) combinations of them) imply the presence of constraints on others' conduct. Since such constraint is an uncontested feature of rights, it is the holding of only some of these positions, or some combinations of them, that amounts to having rights, in the sense explored in this essay.[4]

The position most commonly identified with having a right is what Hohfeld calls a *claim*. If Red has a claim that Blue pay him five pounds, that claim correlatively entails that Blue has a *duty* to pay Red five pounds. Claims are regarded by Hohfeld as rights 'in the strictest sense'. Almost equally common, however, are misleading assertions that one has a right to do things that one has no duty not to do: "I have a right to wear mis-matched socks" or "I have a right to publish my opinions." What is actually being asserted here is more precisely denoted as a *liberty*.[5] Other terms sometimes used to refer to this absence of a duty include *privilege, license*, and *permission*.[6] If Red has no claim that Blue pay him five pounds, Blue has a liberty not to pay him five pounds, and Red has what is called (for lack of an idiomatic term) a *no-claim* that Blue pay him five pounds.

These paired relationships between Red and Blue—claim/duty and no-claim/liberty—hold in respect of some specified act on the part of Blue (the act of paying Red five pounds) and determine the permissibility of its performance or forbearance. Red's having a claim and Blue a duty with respect to this act entail that Blue's not paying is impermissible. Conversely, Blue's having a liberty and Red a no-claim with respect to it entail that Blue's not paying is permissible.

These deontic modalities of acts—permissible and impermissible—are, however, insufficient to distinguish moral duties correlative to moral claim-rights from other kinds of moral duty that have nothing to do with rights. For it is true of *any* moral duty that forbearing from its performance is impermissible. And it is correspondingly true of any act not required by a moral duty that its forbearance is permissible. What is distinctive, then, about the duties that figure in rights language is that, within the rules constituting them, they are permissibly *alterable* or alternatively *enforceable* by virtue of certain choices to that effect. Thus, sets of rules constituting the aforesaid Hohfeldian relationships also create normative relationships that have to do with that alterability and enforceability. Although Blue may have no duty—may have a liberty not—to pay Red five pounds, Red or someone else may have the authority, or what is often called a *power*, to impose (i.e., create and, if necessary, enforce) such a duty on her. In which case, she is describable as having a *liability* to be subjected to this duty.[7] But if Red or everyone lacks this power, Blue enjoys an *immunity* against being subjected to this duty by any of them and they, correspondingly, each have a *disability* to subject her to it.[8] Conversely, although Blue may have a duty—may lack a liberty not—to pay Red five pounds, Red or someone

else may have the power to waive (i.e., extinguish) that duty and/or to waive its enforcement.

In general, we may regard the latter set of positions and the relationships between them as ‘second-order’ or ‘procedural’ ones. They are so because they (p. 463) signify rule-constituted capacities and incapacities to alter ‘first-order’ (claim/duty, liberty/no-claim) relationships and, indeed, other second-order relationships as well. Second-order positions are of particular significance, since it is these that come into play when we consider opposing theoretical views concerning the broad content of rights. In order to clarify our understanding of those views, I shall hereafter confine my attention primarily to claims (and immunities).[9]

3. The Content of Rights

Evidently, the content of moral rights can vary enormously. It is true that, inasmuch as they constitute moral standards for the design of legal systems, there is fairly general theoretical agreement that such rights—that is, the duties and disabilities correlative to them—are permissibly enforceable.[10] Nevertheless, what acts persons can have moral claims to, or immunities against, must depend not only on the fundamental requirements of justice but also on the details of particular agreements or special relationships that some individuals may have with others. However, and that diversity notwithstanding, most literature on rights—especially moral rights—has tended to advance or presuppose some factor that is common to all the duties correlative to such rights. The thought here is that something more, more than the mere structural fact of their entailing permissibly waivable or enforceable duties, is true of all rights.

Historically, since at least the mediaeval period, writers have advanced two opposing theories—or, more precisely, families of theories—as attempts to identify this common factor: the *interest* (or *benefit*) *theory* and the *will* (or *choice*) *theory*. That long-running controversy has persisted to this day.[11]

What exactly is at issue here? As a first approximation, the central thesis of the interest theory is that all duties correlatively entailed by claims are ones the fulfilment of which benefits the claim-holders, whereas the counterpart thesis of the will theory is that such fulfilment is a compliance with the claim-holders' wishes.

On the face of it, these two theses do not seem very far apart from one another. However, this initial impression of similarity is quickly dispelled by their more precise formulations. For, according to the interest theory, the necessary and sufficient condition of a duty's being a correlative one—of its implying another person's claim—is that its fulfilment can generally be expected to serve that person's important interests.[12] For the will theory, on the other hand, a duty correlatively entails someone's having a claim if (and only if) that same person is vested with the powers to *control* that duty: the power to waive it *and* the

power (p. 464) to demand/secure compliance with it.[13] While interest theory rights may sometimes vest such control over duties in claim-holders themselves, they need not do so: Control may be vested in others. Correspondingly, while duties correlative to will theory rights may serve claim-holders' important interests, they need not do so: Those duties may serve only the interests of others. Interest theory rights confer important benefits; will theory rights confer choices or, perhaps, freedoms.

These rival accounts each have far-reaching implications, not only for what can and cannot count as a right but also for who is the holder of the right entailed by any permissibly enforceable duty and, indeed, for who can count as a possible right-holder. In the latter regard, the will theory, in restricting rights to power-holders, evidently cannot ascribe rights to beings who are inherently incapable of exercising powers. A standard view is that will theory right-holders must be *moral agents*: beings to whom it makes sense to attribute choice-making capacities and, thereby, who are capable of giving or withholding consent. Living sane adult human beings are typically taken to exhaust the membership of the club of will theory right-holders. The interest theory, by way of contrast, can vest rights in anyone to whom it makes sense to attribute interests. And while I cannot here enter into an exhaustive discussion of how inclusive that class of beings might be, it evidently extends far beyond living sane adult humans and has been held to encompass such unempowerable beings as fetuses, the dead, members of future generations, and nonhuman animals. Since duties to protect the interests of those unempowerable beings are controllable—waivable or enforceable—only by living sane adult humans, the claims correlative to them can, according to the will theory, be held only by the latter; whereas the interest theory vests such claims directly in those *unempowerables* themselves, entrusting only the powers to control them to the latter.

Does this difference make a difference? The short answer is yes. For if the duty not to kill me is controllable by me, then an act of voluntary euthanasia that brings about my death will not be a violation of my rights. Whereas if that duty is not controllable by me—if I lack the power to waive it—then my consent to that act is insufficient to preclude its being a right-violation. Current environment-degrading activities, that jeopardize the vital interests of persons who will exist only two hundred years hence, are violations of their rights, according to the interest theory, but not according to the will theory. Abortion is not a violation of a will theory right but may be a violation of an interest theory right. The same is true of appropriation of decedents' estates (see Steiner, 1994, pp. 249–261).

As is suggested by the voluntary euthanasia example, the practical differences between these two theories of the general content of rights are also evident in their respective construals of *paternalistic* measures. Thus enforceable duties to refrain from gambling, addictive drug consumption, dangerous sports, or any (p. 465) other self-endangering activities might appear to be more readily interpreted as correlative to interest theory rights than to will theory ones, insofar as they protect those persons' vital interests. In fact, the matter is somewhat more complicated than that. For the persons bearing these duties are the very persons whose interests are being thereby protected and who would, under the interest theory, therefore also be the correlative claim-holders. But the idea

that one can have rights against oneself is not only contrary to the Hohfeldian schema, which holds that correlative relations hold only between *different* persons, but also contrary to ordinary usage, whereby one's claims are claims against others. An alternative interpretation of such duties—one that *is* consistent with Hohfeld and ordinary usage—would be that the holder of the claims correlative to them is some collective entity, such as the state or the community.[14] If that collective entity can be said to have vital interests that are protected by such duties, then those claims can indeed be interpreted as interest theory rights. What's also true, however, is that if that collective entity is empowered to waive or demand fulfilment of those duties, then those claims can equally be interpreted as will theory rights. Much the same may be said about enforceable duties regulating voluntary relationships between members of the same sex or different racial and ethnic groups.

Finally, a further difference between the two theories has sometimes been thought to arise in respect of the idea of *inalienable rights*. That idea entails the possibility of rights that simply cannot be waived—neither by their holders nor by anyone else. Quite clearly, the will theory is incapable of accounting for such rights. Does the interest theory fare better, in this regard? Here, we need to consider what a right's being inalienable would imply. Hohfeld's schema indicates that someone's being disempowered to waive Blue's right entails that person's having a disability. Accordingly, someone holds the immunity correlative to that disability. Moreover, if that right is unwaivable, so too must be that immunity: otherwise, its holder would be empowered to waive it, thereby rendering Blue's right itself waivable. But if that immunity is indeed unwaivable, then its holder—being in turn disempowered—must hold a disability that correlatively entails yet another immunity. Accordingly, this chain of unwaivable immunities must either extend into an unacceptable infinite regress or terminate in an immunity that *is* waivable, thereby rendering Blue's right waivable, that is, alienable (see Steiner, 1994, pp. 71–72, 1998, pp. 253–255). In short, the idea of inalienable rights proves, on closer inspection, to be problematic in itself, regardless of whether we employ the interest theory or will theory of rights.

(p. 466) 4. The Status of Rights

Concerns about the status of moral rights, like concerns about the status of other moral norms, are typically motivated by the possibility of *conflict.* That is, we worry about such matters because we imagine or actually encounter circumstances in which two (or more) duties, though each separately performable, are not jointly performable. There is now a growing philosophical literature on the subject of whether duty-conflicts—dilemmas—signify the presence of contradictions in the moral code that generates them: that is, whether such conflicts are real or merely the apparent results of a code whose provisions are remediably incomplete or otherwise underspecified.[15]

Whatever may be the correct answer to that question, it is generally agreed that such conflicts are both theoretically and practically undesirable. We want our set of moral norms to deliver a definitive answer to the question of whether a particular person's performance of a particular act, *A*, in a particular circumstance, *C*, is permissible or impermissible. And this desire seems to be an especially strong one when it comes to issues of moral rights. The reason for its special strength has very much to do with the status of such rights.

For, as previously noted, a set of moral rights—as embodiments of justice—is presumed to constitute the relevant standard for the moral appraisal of legal rules. Since one of the distinguishing empirical features of legal rules is their *dominant enforceability*—since their demands in fact enjoy enforceable priority over any competing demands—it seems to follow that the moral standard to which legal rules *should* conform must itself enjoy priority over all other practical (including moral) requirements. In a conflict of duties, only one of which is correlative to a right, it is the fulfilment of that duty that morality requires. This kind of prioritization of correlative moral duties—of moral rights or, simply, justice—over the demands of other moral rules or values, has been variously expressed: John Rawls (1971, pp. 42–44) assigns *lexical priority* to the demands of justice; Robert Nozick (1974, pp. 28–33) describes moral rights as *side-constraints* on the pursuit of our ends; Ronald Dworkin (1977, ch. 4) has argued that rights are *trumps*.

The view of morality presupposed by such claims is decidedly *not*, as some writers have erroneously suggested, that it is ‘right-based’ (see Mackie, 1978). It does not imply that all moral duties are, in some sense or other, derivative from the duties correlative to moral rights. Rather, what such claims presuppose is that morality is *pluralistic:* that it consists of several primary rules or values (including one for justice or moral rights) that are mutually independent in the sense of not being reducible one to another.[16] And what such claims assert is that, within this plurality of norms, the demands of justice or moral rights enjoy primacy. In circumstances where a duty generated by any of these other primary norms con (p. 467) flicts—is jointly unperformable—with a duty correlative to a moral right, compliance with the latter is what morality requires.

Although the assignment of this status to moral rights has not gone unchallenged, it does seem to conform to widely held views. Such an assignment does, for instance, appear to be a necessary condition for making sense of the common notion of ‘having a right to do wrong’ (see Waldron, 1981). Of course, and following Hohfeld, no one can ever be strictly said to have a *right* to do anything: At most, persons have *liberties* to act, and having a liberty to do something does not entail a duty in anyone else. But we can have rights—claims—that others not interfere with our acting in certain ways, and those persons would thereby hold correlative duties of noninterference. Among the ways of acting that are protected by such claims may be ones that, in certain circumstances, are wrong on grounds other than justice. Thus, one of morality's primary rules or values may well be *charity*—a norm that vests me with duties to transfer some of my resources to those more in need of them than I am. Assuming that I am justly entitled to those resources—that I hold moral rights that others not interfere with my disposition of them—this does *not*

entail that I do no wrong in refusing to act charitably and insist on withholding those resources from needier persons. All that is entailed by assigning primacy to moral rights is that others would be committing a *worse* wrong by forcing me to make that transfer. In other words, morality's assigning such primacy entails that the following three alternatives are listed in descending order of desirability: (1) my choosing to transfer my resources to the needy; (2) my withholding those resources; and (3) my attempting to withhold those resources but being forced by others to transfer them. It is outcome (2) that represents having (i.e., exercising) a right to do wrong. The fact that my withholding is an exercise of my rights is insufficient morally to justify that act. All that it would suffice to justify are whatever actions might be necessary to prevent or remedy my being forced to transfer (see Steiner, 1996).

There is another, and related, feature of our moral thinking that suggests primacy status for moral rights. In everyday moral discussions, we standardly don't invoke rights to resolve our disagreements, except as a last resort. Thus, as members of a newspaper's editorial staff, we might disagree with one another about which candidate the paper should support in a current electoral contest. Typically, the way we would argue about the relative merits of each of the candidates is by ascertaining facts, clarifying conceptual ambiguities, and appealing to one or another of the more fundamental moral rules or values that might severally be associated with each alternative. In other words, we would do our best to reach a consensus on which option is the morally optimal one. It's only when we find ourselves unable to reach that consensus that I might fall back on asserting “Look, I'm the managing editor here—I'm the one with the moral right to decide whom the paper supports.” For me to offer that argument at the *outset* (p. 468) of our discussion would be not only churlish but also beside the point, since what that discussion is about is how best I can exercise my right: that it *is* my right is not in dispute. In other words, the resolving role of moral rights in moral disputes is not to dissolve disagreement but rather to determine *who*—in the face of indissoluble disagreement—ought to decide what is to be done. And it seems clear that moral rights can play this adjudicating role only if their status is one of having priority over whatever other moral norms may be in mutual contention in such disputes.

5. The Compossibility of Rights

This primacy of moral rights is very far, however, from exhausting all the issues surrounding their status. For, on the face of it, it looks like duty-conflicts can occur not only between correlative and noncorrelative moral duties but also between different correlative duties themselves (see Rowan, 1999; Wellman, 1999). If rights are indeed *trumps*, then conflicts between two (or more) correlative duties would be akin to what might happen in card games played with two decks of cards! In a world where all sorts of moral demands are increasingly presented as moral rights, the problem of conflicting—

incompossible—rights has been much noted and, as we'll see, sheds important light on another aspect of the status, as well as the content, of moral rights.

Duty-conflicts, as was previously noted, are both theoretically and practically undesirable. But they are especially undesirable if the moral duties in conflict are correlative ones, that is, are ones each entailing a moral right. Why? One reason has to do with the aforementioned fact that moral rights are presumed to constitute the relevant standard for the moral appraisal of legal systems. And legal systems, through the pyramidically hierarchical structure of their judicial institutions, are intolerant of conflicts between legal duties, resolving them by deeming only one of the mutually conflicting duties to be legally valid. Hence, a set of moral rights that is *not* similarly univocal—that sustains conflicts between its correlative duties—is less able to perform that aforementioned adjudicating role, and would thereby be impaired as a standard for the moral appraisal of legal systems. Invoking its authority would be somewhat like using an elastic string as a device for measuring distances. It would leave judicial institutions free—indeed, obliged—to make their decisions on grounds other than ones based on litigants' moral rights. For many writers, such judicial powers are seen as antithetical to the idea of ‘the rule of law’ (see Hart, 1985).

Of course, the fact that a set of correlative moral duties *may* generate such **(p. 469)** conflicts does not imply that it will actually do so. Sometimes, we can suppose, there is more than one way of complying with a moral duty. And in many such cases, it may well be true that at least one of these alternatively compliant actions would be such as *not* to amount to a breach of another duty. That said, however, our everyday experience of moral dilemmas strongly suggests that the occurrence of duty-conflicts is far from being merely a conceivable possibility.

So the question we need to ask ourselves is: What characteristics must a set of rights possess, if its entailed set of correlative duties is to be incapable of generating conflicts? As a first approximation, we can say that it must, at least implicitly, divide action-space into discretely demarcated portions. Since the fulfilment of each duty consists of a performance or a forbearance, it involves its subject in occupying certain spatio-temporal locations and using certain material objects: These are the physical elements of the conduct required by that duty. For two duties not to be in conflict, it's necessary that their respective sets of physical elements do not *intersect* with one another, for example, that these duties do not respectively require the same person or thing to be in two different places at the same time. A set of duties that fails to satisfy this condition is one that suffers from what I've elsewhere called ‘extensional overlap’: two (or more) of its required pieces of conduct are separately but not jointly performable, because their respective sets of physical components are partly but not wholly identical.[17]

In this sense, a set of compossible rights is one in which each right vests its holder with a unique *domain*, within which the duty correlative to that right is to be fulfilled. Hence, the traditional Lockean view—that all rights are essentially property rights—far from being merely a piece of bourgeois ideology, actually embodies an important conceptual truth. In

this vein, H.L.A Hart correctly observes: “Rights are typically conceived of as *possessed* or *owned* or *belonging to* individuals, and these expressions reflect the conception of moral rules as not only prescribing conduct but as forming a kind of moral property of individuals to which they are as individuals entitled” (1955, p. 182). What this amounts to is simply a claim that, in a compossible set of rights, all rights are *funded*. The sets of resources respectively required for the fulfilment of each of their entailed duties are specifiable as extensionally distinct from one another.

None of this should be taken to deny what is obviously true: Namely, that intensional descriptions of duty-required actions—descriptions formulated in terms of their aims or purposes—usually serve as perfectly adequate *surrogates* for extensional specifications. But they can do so precisely because, and to the extent that, duties to do those actions exist against a background of reasonably well-partitioned domains. Certainly a world devoid of the linguistic and other conventions that facilitate such surrogacy would, to say the least, be cumbersome in the extreme. So all that is being argued here is that these intensional descriptions *must be* such surrogates: in the event of litigation, they must be transformable, however tediously, into extensional specifications. For insofar as they are **(p. 470)** not, insofar as a set of moral rights contains incompossibilities, it will fail to serve as a moral standard for legal decision-making.

In this respect, the will theory of rights enjoys an obvious advantage over the interest theory.

For even the latter's proponents acknowledge: “If rights are understood along the lines of the Interest Theory … then conflicts of rights must be regarded as more or less inevitable” (Waldron, 1989, p. 503). This is not surprising. Recall that, according to this theory, persons have a right if and only if some aspect of their well–being (some interest of theirs) is sufficiently important in itself to justify holding other persons to be under a duty. Whereas will theory duties are identifiable solely by virtue of their controllability, what is distinctive of interest theory duties is that they all have the same general intensional content: All actions enjoined by them have the purpose of servicing these important interests. And there are evidently no reasons to suppose that any two such services need be jointly performable, as well as many reasons to suppose that frequently they are not. The important interests persons have, both in privacy and in free expression, are, as we know, ones that cannot invariably be jointly serviced. Nor, tragically, can the vital interests several persons may each have in gaining access to some scarce medical resource. Accordingly, it would appear that any conflict between duties to service those interests can be adjudicated only by reference either to moral values other than that of rights themselves, or to what would—in that particular case—most increase the socially aggregated amount of interest-service. The problem with the first of these is its implication that rights register no independent set of moral demands, while the second excludes the distinctly *distributive* function of rights. In contrast, will theory rights, as domains over which claim-holders have controlling powers, more readily lend themselves

to the sort of discrete partitioning of action-space that was previously indicated to be a necessary condition of their compossibility (see Simmonds, 1998, pp. 196 ff.).

6. The Enforceability of Rights

Important aspects of the status of moral rights are also implicit in their property of being permissibly *enforceable*. This permissible enforceability is, indeed, readily inferable from the aforementioned fact that moral rights constitute the standard for the moral assessment of legal rules that are, *ex hypothesi*, enforceable. To say that a right is permissibly enforceable is to say that the breach of its correlative duty may be forcibly prevented or redressed. However, perplexing problems arise in this regard when, as is often the case, the only way of preventing or redressing (p. 471) such a breach involves violating another right. Such situations have been analysed by some writers as yet another form of rights-conflict, inasmuch as they presume that the person whose right is threatened with, or suffers, a violation has a consequent right to that enforcement—a right that is thereby in conflict with the right whose violation is necessary in order to enforce the former one.

Thus Amartya Sen has proposed cases involving *multilateral interdependences:* Donna can prevent Amanda's being killed by a time bomb planted by Brian, but only by commandeering Charles's telephone to warn Amanda of the danger awaiting her. Sen contends that any moral theory that takes rights seriously—that assigns them nonderivative independent moral value—must be a consequentialist one that vests Donna with a duty to commandeer Charles's telephone. That is, such a moral theory must mandate tradeoffs of less valuable rights (Charles's rights with respect to his telephone) for more valuable ones (Amanda's right not to be killed).[18]

Nozick objects to such claims, arguing that they foster a ‘utilitarianism of rights’ that, in failing to reflect the deontological side-constraint function of rights, is inconsistent with the inviolable *status* of persons that moral rights are supposed to express. Moral rights, he maintains, “reflect the underlying Kantian principle that individuals are ends and not merely means; they may not be sacrificed or used for the achieving of other ends without their consent” (1974, pp. 30–31). A moral theory embodying a utilitarianism of rights would allow, indeed require, us to violate a person's right if that were necessary to minimize total rights-violation in society (pp. 28–32). Arguing in considerable detail along similar lines, Frances Kamm suggests that “[n]ot permitting minimising violations is … to show maximal concern for the right and the status [of that person], *consistent with* the right and the status existing at all” (1996, p. 267).

Can persons have moral rights to the enforcement of their moral rights? A possible resolution of the Sen versus Nozick-Kamm debate might go like this. Recall that the enforcement of rights can consist in either the ex ante prevention of right-violations or the ex post redress of them. So we might say that Donna does indeed have a correlative

duty to violate Charles's right, in order to prevent the violation of Amanda's right. But rather than that trade-off being the end of the matter—as some consequentialists would allow—we add two further provisions: (1) that Donna also has a correlative duty to make redress to Charles for that violation; and (2) that Brian has a correlative duty to make redress to Donna for imposing on her a situation in which she is (enforceably) obliged to violate Charles's right.[19]

More generally, what this proposed resolution suggests is that the difference, between consequentialist views of rights and the view of them as deontological side-constraints, may be less than is often assumed. A pluralist consequentialism of the sort advanced by Sen, in acknowledging (as some consequentialisms do not) a multiplicity of primary values, need not be committed to mandating trade (p. 472) offs between those several values, even if (like all consequentialisms) it must mandate tradeoffs between competing instances of the *same* value.[20] For it can immunize any of those values against the former kind of tradeoff by according it a lexically prior status in relation to the others. That is, it can consistently hold, as Nozick-Kamm do, that any duty of justice *trumps* or *side-constrains* the pursuit of all other values and the performance of whatever duties that pursuit entails. Nor is this side-constraining property lost in the case of rights to the enforcement of rights. For as we've seen, the tradeoff between Amanda's right and that of Charles does not entail that the latter is overridden. Rather, and due to the aforesaid dual nature of enforcement, it entails only that Charles's right can be enforced by other means (see Steiner, 1994, pp. 203–206; 2005).

7. Negative and Positive Rights

The issue of whether moral rights are negative or positive—whether our correlative duties require forbearances or performances—is essentially a question about the more specific content of *justice* as a moral principle. However, because the literature advancing various rival theories of justice has, since the 1971 publication of Rawls's work *A Theory of Justice*, proliferated enormously and shows no sign of abating, it would be impossible here to summarize—or even simply list—all the diverse contributions that have been made to the discussion of this issue.[21] Hence, the treatment of this issue here must, perforce, be limited to an examination of several of the more general aspects of rights that are implicit in it.

Despite some impressions to the contrary, virtually all theories of moral rights allow that these can be *both* negative and positive. That is, our correlative duties can consist of both acts that we must not perform and acts that we must perform. Thus, I can have correlative duties not to assault you and correlative duties to pay you five pounds. Where controversy arises in this regard is more perspicuously located in the issue of whether negative and positive moral rights are equally fundamental or *foundational*. Most theories embrace the view that our foundational rights include negative ones, but some theories maintain that they include *only* negative ones, and that whatever positive moral rights we may have must be nonfoundational or *derivative* ones. To grasp the core of what is at stake in this controversy, we need first to attend to the notions of foundational and derivative rights.

A foundational right is one that is not inferable from any other right and from which other rights—derivative ones—are inferable. One way of understanding the present controversy is in terms of *how* derivative rights are inferred from (p. 473) foundational (or other derivative) rights. Thus a right to Y might be derived from a right to X by virtue of the fact that Y is a form or *instance* of X. This is plainly evident if Y is physical health and X is well-being, or if Y is nonincarceration and X is freedom. Another mode of derivation is *instrumental:* Thus, say, Y is medical treatment and X is physical health. Instantiating and instrumental derivations, respectively, conjoin conceptual and causal premises with the statement that there is a right to X, in order to derive their conclusion that there is a right to Y. That is, the duty to do Y is either a constitutive element of the correlative duty to do X, or doing Y is a means to doing X.

Still other modes of derivation invoke Hohfeldian considerations. One way a right to Y can be derived from a right to X is through the exercise of *powers* attached to the right to X. Your current Y right to that car is created by my exercising my antecedent X right to that car: that is, by my exercising the power to transfer the ownership of the car to you. In exercising that power, I extinguish my X right that you (and others) not interfere with my use of the car, and I create your Y right that others (and I) not interfere with your use of it. Another kind of derivation involves the exercise of *liberties*. Thus my X rights to (others' noninterference with) my use of my supply of paper and my paper-shredding

machine standardly give me a Y right to their noninterference with my use of the shredded paper. Such ‘Hohfeldian derivations’ combine the statement asserting the X right with statements asserting (1) the existence of those powers or liberties, and (2) the fact of their having been exercised, in order to infer the right to Y.

Theories of moral rights that regard foundational rights as *solely* negative are predominantly ones in which whatever positive rights they sustain are ones that exist by virtue of such Hohfeldian derivations. Your positive right to my services—teaching, for example—is derived from my consent to provide them to you. In the absence of that consent, your compelling me to provide them[22] would not count as an enforcement of a correlative duty, that is, as an enforcement of your positive right, for you would have *no* such right. Rather, such compulsion would amount to a breach of *your* negative correlative duty not to interfere with me in that way.[23] Such theories deploy, as their foundation, either an array of rights against various specified forms of interference or some single general right to freedom—often more precisely formulated as a right to *equal* freedom (see George, 1931, ch. 9; Hart, 1955; Kant, 1991, pp. 56–58; Pollock, 1981; Spencer, 1851, ch. 6; Steiner, 1994, pp. 216–223). Sometimes this general right to freedom is used, implicitly or explicitly, to derive—as an instantiation of it—a right of *self-ownership* (see Kant, 1991, p. 63; Nozick, 1974, pt. 2). It has further been argued that self-ownership, though necessary, is insufficient to instantiate a right to equal freedom, inasmuch as no partitioning of action-space—beyond the confines of right-holders' bodies—can be derived from it.[24] Accordingly, each person's right of self-ownership must be conjoined with an entitlement to part of the external world, if each is to be possessed of that foundational right. The latter entitlement (p. 474) can itself be construed as a negative right: a right that others forbear from appropriating more than an equal per capita share of land or natural resources. And in a world where land and natural resources have been fully appropriated by only some persons, the latter right entitles its holders to redress in the form of an equal per capita share of the *value* of what has been appropriated.[25]

There is an abundance of theories advancing the view that foundational rights are positive as well as negative ones. Almost all contemporary nonlibertarian theories of justice do so, as do most standard (less-theorized) accounts of human rights. Some of these theories deploy forms of contractarian reasoning to support this view; others seek to sustain it through teleological accounts of human nature. Such basic positive rights, in less-theorized accounts, are presented simply as an array of diverse kinds of entitlement that are each presumed to be self-evidently essential for right-holders to have. In more-theorized accounts, they typically derive from one unifying or underlying right entitling its holders to be secured in a certain broadly designated personal condition: well-being, autonomy, self-respect, and agency are among those most favoured. Accordingly, the correlative duties derived from these, while including many forms of noninterference, also extend to the provision of what are reasonably conceived to be the necessary political, economic, and social means for obtaining them. In this regard, the set of rights generated by such theories is more readily associated with the interest theory model of rights than with its will theory counterpart, since the immediate content of their

correlative duties is dependent not on right-holders' choices but rather on what would best bring about that designated personal condition. And here some of these theories encounter the aforementioned problem of incompossibility, inasmuch as they often fail to incorporate a strictly distributive requirement in their reasoning. For there is no a priori reason why the means, needed to enhance some persons' well-being, autonomy, self-respect, or agency, may not be such as to diminish that of others: Rival claims to those means can be adjudicated only by reference either to values other than the right to that designated condition or to which assignment of those means would achieve the greater amount of it.

References

Ackerman, Bruce. 1980. *Social Justice in the Liberal State.* New Haven, Conn.: Yale University Press.

Barry, Brian. 1995. *Justice as Impartiality.* Oxford: Oxford University Press.

Cohen, G. A. 1995. *Self-Ownership, Freedom and Equality.* Cambridge: Cambridge University Press.

Coyle, Sean. 2002. "Are There Necessary Truths about Rights?" *Canadian Journal of Law and Jurisprudence* 15: 21–49.

Dworkin, Ronald. 1977. *Taking Rights Seriously.* London: Duckworth.

Dworkin, Ronald. 2000. *Sovereign Virtue.* Cambridge, Mass.: Harvard University Press.

Forrester, James. 1996. *Being Good and Being Logical.* New York: M. E. Sharpe.

Gauthier, David. 1986. *Morals by Agreement.* Oxford: Oxford University Press.

George, Henry. 1931. *Social Problems.* London: Henry George Foundation.

Gewirth, Alan. 1996. *The Community of Rights.* Chicago: University of Chicago Press.

Gowans, Christopher, ed. 1987. *Moral Dilemmas.* New York: Oxford University Press.

Hacker, P.M.S., and J. Raz, eds. 1977. *Law, Morality and Society.* Oxford: Oxford University Press.

Hart, H.L.A. 1955. "Are There Any Natural Rights?" *Philosophical Review* 64: 175–191.

Hart, H.L.A. 1982. *Essays on Bentham.* Oxford: Oxford University Press.

Hart, H.L.A. 1985. "The Nightmare and the Noble Dream." In *Essays in Jurisprudence and Philosophy*, 123–144. Oxford: Oxford University Press.

Hilpinen, Risto, ed. 1971. *Deontic Logic: Introductory and Systematic Readings.* Dordrecht: Reidel.

Hilpinen, Risto. 1981. *New Studies in Deontic Logic.* Dordrecht: Reidel.

Hohfeld, Wesley N. 1919. *Fundamental Legal Conceptions.* W. W. Cook, ed. New Haven, Conn.: Yale University Press.

Jones, Peter. 1994. *Rights.* Houndmills, England: Palgrave.

Jones, Peter. 1999. "Group Rights and Group Oppression." *Journal of Political Philosophy* 7: 353–377.

Kamm, F. M. 1996. *Morality, Mortality.* Vol. 2. *Rights, Duties and Status.* Oxford: Oxford University Press.

Kant, Immanuel. 1991. *The Metaphysics of Morals.* Trans. and ed. Mary Gregor. Cambridge: Cambridge University Press.

Kocourek, Albert. 1928. *Jural Relations.* Indianapolis: Bobbs-Merrill.

Korner, Stephan, ed. 1974. *Practical Reason.* Oxford: Blackwell.

(p. 478) Kramer, Matthew. 1998. "Rights without Trimmings." In Kramer, Simmonds, and Steiner, 1998, 7–111.

Kramer, Matthew, Nigel Simmonds, and Hillel Steiner. 1998. *A Debate over Rights: Philosophical Enquiries.* Oxford: Oxford University Press.

Kymlicka, Will, ed. 1995. *The Rights of Minority Cultures.* Oxford: Oxford University Press.

Levi, Isaac. 1986. *Hard Choices.* Cambridge: Cambridge University Press.

Lindahl, Lars. 1977. *Position and Change.* Dordrecht: Reidel.

Lomasky, Loren. 1987. *Persons, Rights and the Moral Community.* Oxford: Oxford University Press.

Lyons, David. 1969. "Rights, Claimants and Beneficiaries." *American Philosophical Quarterly* 6: 153–185.

MacCormick, D. N. 1977. "Rights in Legislation." In Hacker and Raz, 1977, 189–209.

MacDonald, Ian. 1989. "Group Rights." *Philosophical Papers* 28: 117–136.

Mackie, J. L. 1978. "Can There be a Right-Based Moral Theory?" *Midwest Studies in Philosophy* 3: 350–359.

Mason, H. E., ed. 1996. *Moral Dilemmas and Moral Theory.* New York: Oxford University Press.

Murphy, Liam, and Thomas Nagel. 2002. *The Myth of Ownership.* Oxford: Oxford University Press.

Nozick, Robert. 1974. *Anarchy, State and Utopia.* New York: Basic Books.

Nozick, Robert. 1997. "Moral Complications and Moral Structures." In *Socratic Puzzles*, 201–248. Cambridge, Mass.: Harvard University Press.

Pollock, Lansing. 1981. *The Freedom Principle.* Buffalo, N.Y.: Prometheus Books.

Porn, Ingmar. 1970. *The Logic of Power.* Oxford: Blackwell.

Rakowski, Eric. 1991. *Equal Justice.* Oxford: Oxford University Press.

Rawls, John. 1971. *A Theory of Justice.* Cambridge, Mass.: Harvard University Press.

Raz, Joseph, ed. 1978. *Practical Reasoning.* Oxford: Oxford University Press.

Raz, Joseph. 1984. "On the Nature of Rights." *Mind* 93: 194–214.

Raz, Joseph. 1986. *The Morality of Freedom.* Oxford: Oxford University Press.

Raz, Joseph. 1990. *Practical Reason and Norms.* Princeton, N.J.: Princeton University Press.

Rescher, Nicholas, ed. 1967. *The Logic of Decision and Action.* Pittsburgh: University of Pittsburgh Press.

Roemer, John. 1998. *Equality of Opportunity.* Cambridge, Mass.: Harvard University Press.

Ross, Alf. 1968. *Directives and Norms.* London: Routledge and Kegan Paul.

Rowan, John. 1999. *Conflicts of Rights.* Boulder, Colo.: Westview.

Scanlon, T. M. 1998. *What We Owe to Each Other.* Cambridge, Mass.: Harvard University Press.

Sen, Amartya. 1982. "Rights and Agency." *Philosophy and Public Affairs* 11: 3–39.

Sen, Amartya. 1985. "Rights as Goals." Austin Lecture 1984. In *Equality and Discrimination: Essays in Freedom and Justice*, ed. Stephen Guest and Alan Milne, 11–25. Stuttgart: Franz Steiner.

Sen, Amartya. 1992. *Inequality Reexamined.* Oxford: Oxford University Press.

Simmonds, Nigel. 1998. “Rights at the Cutting Edge.” In Kramer, Simmonds, and Steiner, 1998, 113–232.

Sinnott-Armstrong, Walter. 1988. *Moral Dilemmas.* Oxford: Blackwell.

(p. 479) Spencer, Herbert. 1851. *Social Statics.* London: John Chapman.

Steiner, Hillel. 1994. *An Essay on Rights.* Oxford: Blackwell.

Steiner, Hillel. 1996. “Duty-Free Zones.” *Aristotelian Society Proceedings* 96: 231–244.

Steiner, Hillel. 1998. “Working Rights.” In Kramer, Simmonds, and Steiner, 1998, 233–301.

Steiner, Hillel. 2005. “Conscription.” In *The Egalitarian Conscience: Essays in Honour of G. A. Cohen*, ed. Christine Sypnowich. Oxford: Oxford University Press.

Stocker, Michael. 1990. *Plural and Conflicting Values.* Oxford: Oxford University Press.

Sumner, L. W. 1987. *The Moral Foundation of Rights.* Oxford: Oxford University Press.

Thomson, Judith Jarvis. 1990. *The Realm of Rights.* Cambridge, Mass.: Harvard University Press.

Tuck, Richard. 1979. *Natural Rights Theories.* Cambridge: Cambridge University Press.

Vallentyne, Peter. 1989. “Two Types of Moral Dilemmas.” *Erkenntnis* 30: 301–318.

Vallentyne, Peter, and Hillel Steiner, eds. 2000a. *Left-Libertarianism and Its Critics.* Houndmills, England: Palgrave, 2000.

Vallentyne, Peter. 2000b. *The Origins of Left-Libertarianism.* Houndmills, England: Palgrave.

Van Parijs, Philippe. 1995. *Real Freedom for All.* Oxford: Oxford University Press.

Von Wright, G. H. 1963. *Norm and Action.* London: Routledge and Kegan Paul.

Von Wright, G. H. 1972. *An Essay in Deontic Logic and the General Theory of Action.* Amsterdam: North-Holland.

Waldron, Jeremy. 1981. “A Right to Do Wrong.” *Ethics* 92: 21–39.

Waldron, Jeremy. 1987. “*Nonsense upon Stilts”: Bentham, Burke and Marx on the Rights of Man.* London: Methuen.

Waldron, Jeremy. 1989. “Rights in Conflict.” *Ethics* 99: 503–519.

Walzer, Michael. 1983. *Spheres of Justice.* New York: Basic Books.

Wellman, Carl. 1985. *A Theory of Rights.* Totowa, N.J.: Rowman and Allanheld.

Wellman, Carl. 1999. *The Proliferation of Rights.* Boulder, Colo.: Westview Press.

Wenar, Leif. Forthcoming. “The Nature of Rights.”

Williams, Bernard. 1973. “Ethical Consistency.” In *Problems of the Self*, 166–186. Cambridge: Cambridge University Press.

Notes:

(1.) So, in the latter regard, his error lies in claiming that rights discourse has no application *outside* the realm of law, that is, in a state of nature.

(2.) The term ‘services’ simply and generally refers to persons' actions. A right is an entitlement to another person's performance or forbearance.

(3.) A considerably more elaborate scheme is presented in Kocourek, 1928.

(4.) See note 9.

(5.) Liberty, in this *normative* or *evaluative* or *rule-constituted* sense, is to be distinguished from the *descriptive* or *empirical* concept—absence of prevention—which is equally signified by the word ‘freedom’.

(6.) As various writers have noted, these terms may have slightly different additional connotations, depending on the other contents of the set of rules implying this absence of duty: A privilege or a license is typically an exceptional absence of a duty of a type that is normally present. Nevertheless, all of them refer to an absence of duty.

(7.) A further—though somewhat disputed—aspect of having a power is that, within the rules assigning that power, it entails having the liberty to exercise it. Thus Red can be said to have the power to subject Blue to a duty to pay him five pounds only if Red has the liberty to do so and Blue the correlative no-claim that Red not do so. If, on the contrary, Red lacks this liberty and thus has a duty not to subject Blue to the duty of paying him five pounds, he would also lack the power to subject her to that payment duty. So powers and their correlative liabilities, respectively, entail liberties and their correlative no-claims; see Steiner, 1998, pp. 242–243, 268.

(8.) Following the previous note's reasoning, we can see that since Red's disability is his lack of a power, this entails his lack of a liberty and thus his having a duty that, in turn, correlatively entails that someone (as the holder of the immunity correlative to Red's disability), usually Blue, has a claim. On the reducibility of power/liability and immunity/disability relations to liberty/no-claim and claim/duty relations, see Ross, 1968, pp. 118–120, and Lindahl, 1977, p. 212 ff.

(9.) Much ink has been needlessly spilt in disputes over whether all rights entail the presence of correlative constraints. To some great extent, the issue is purely terminological. The view that some rights don't entail constraints trades on the undiscriminating use of the term 'rights' noted by Hohfeld. Clearly, neither no-claims nor liabilities are in themselves constraints on the conduct of those who have them: They do not imply, of any act, that it is impermissible. Hence, no clear analytical purpose is served by treating their correlatives—liberties and powers—as rights. Since only duties and disabilities are constraints, clarity and precision tell in favor of counting only their correlatives (claims, immunities) as rights. For a contrary view supporting the inclusion of liberties and powers as rights, on grounds of both common usage and analytical utility, see Wenar, forthcoming.

(10.) ‘Enforcement of a disability’ is, at best, an awkward formulation and not a little opaque in terms of both ordinary and legal usage. What such enforcement amounts to is securing the nullification of someone's presumed exercise of a power that, having that disability, she in fact lacks. Canceling a sale of stolen property is a standard example.

(11.) The classic statement of modern will theory is Hart's 1973 essay “Bentham on Legal Rights,” republished in Hart, 1982; see also Hart, 1955. Some of the more influential presentations of the modern interest theory include: Raz, 1984, 1986, pt. 3; MacCormick, 1977; and Lyons, 1969. On aspects of the early modern origins of this controversy, see Tuck, 1979. The most recent and extensive presentations of these rival theories are to be found in Kramer, Simmonds, and Steiner, 1998.

(12.) See Raz, 1984, p. 166, who suggests that persons may be said to have a right ifand only if some aspect of their well–being (some interest of theirs) is sufficiently important in itself to justify holding other persons to be under a duty.

(13.) That is, a will theory claim-holder is the person who is empowered *both* to extinguish that duty ex ante (or forgive its nonfulfilment ex post) *and* alternatively to demand fulfilment of it ex ante (or secure redress for its nonfulfilment ex post).

(14.) The question of whether and, if so, in what sense collectivities can be moral right-holders—whether there can be *group rights*—is a complex one. Among the issues it seems to turn on is that of whether either agency or interests can be irreducibly attributed to collectivities: that is, agency or interests that are not disaggregateable into the respective agencies or interests of their individual members. In the burgeoning literature on the topic of collectivities as right-holders, see Kramer, 1998, pp. 49–60; Kymlicka, 1995; MacDonald, 1989; Jones, 1999.

(15.) What amounts to no more than a woefully incomplete sample of the relevant leading work here includes the following items, listed in no particular order: Von Wright, 1963, 1972; Hilpinen, 1971, 1981; Porn, 1970; Rescher, 1967; Williams, 1973; Korner, 1974; Raz, 1978, 1990; Levi, 1986; Gowans, 1987; Sinnott-Armstrong, 1988; Vallentyne, 1989; Stocker, 1990; Steiner, 1994, ch. 4; Mason, 1996; Forrester, 1996; Nozick, 1997.

(16.) Hence the possibility, mentioned at the outset, that morality might not contain rights. For morality might be pluralistic and yet not include justice/moral rights among its set of primary rules or values. Or alternatively, it might be *monistic*, enjoining obedience to only one rule or the maximized achievement of only one valued state of affairs, with all of its other injunctions amounting to no more than particular instantiations of—or instrumental derivations from—that single norm.

(17.) If they—including the respective bearers of those duties—were wholly identical, there would be no joint unperformability, inasmuch as one piece of conduct would suffice to discharge both duties. The conditions for the absence of extensional overlap evidently need further refinement. For while someone (or some object) cannot be in two places at the same time, that person (or it) can be in one place at two different times, or at two places at two different times, and so on. Equally, two persons cannot occupy exactly the same spatio-temporal location. For a fuller elaboration of those conditions, see Steiner, 1994, pp. 74–101, 1998, pp. 262–274.

(18.) See Sen, 1982, pp. 4–19, 1985, p. 15; also Thomson, 1990, chs. 4–7. It should be noted that it is unclear whether Sen himself believes that Donna's moral duty to commandeer the telephone is a correlative one, i.e. is one entailing a right in Amanda.

(19.) And presumably Brian's redress duty would thereby consist in compensating Donna for the redress she owes to Charles. Readers are strongly advised to consult Kamm's text for a full statement of the reasons why she would *not* accept the validity of this proposed resolution.

(20.) Indeed, it is unclear to me how *deontological* theories can avoid mandating such tradeoffs.

(21.) Prominent among these contributions, apart from works previously mentioned, are: Barry, 1995; Scanlon, 1998; Dworkin, 2000; Van Parijs, 1995; Rakowski, 1991; Gauthier, 1986; Cohen, 1995; Lomasky, 1987; Ackerman, 1980; Murphy and Nagel, 2002; Walzer, 1983; Sen, 1992; Roemer, 1998; Gewirth, 1996.

(22.) Or your penalizing me for failing to provide them.

(23.) Of course, most such theories also include provisions for the creation of positive rights to redress of right-violations, regardless of whether the rights violated are themselves negative or positive. In the event of my failing to provide you with my agreed teaching services, or of my assaulting you, you have a power to create a positive right to my compensating you.

(24.) It's worth noting that, in the case of “Siamese twins,” even such a minimal right as self-ownership can generate incompossible duties.

(25.) Anthologies tracing the history and current accounts of this view are Vallentyne and Steiner, 2000a, 2000b.

Hillel Steiner

Hillel Steiner is professor of political philosophy in the University of Manchester, England, and Fellow of the British Academy.