

# Rights

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The Second Amendment to the United States Constitution grants Americans the right "to keep and bear arms." For many years, however, Americans have been divided about what that right means. Is it fundamental? Can it be regulated? How should it be balanced against other rights?

## **What is a Right?**

Many moral controversies today are couched in the language of rights. Indeed, we seem to have witnessed an explosion of appeals to rights—gay rights, prisoners' rights, animal rights, smokers' rights, fetal rights, and employee rights. The appeal to rights has a long tradition. The American Declaration of Independence asserted that "all men...are endowed by their Creator with certain unalienable rights...among these are life, liberty, and the pursuit of happiness." In 1948, the United Nations published the Universal Declaration of Human Rights, stating that all human beings have "the right to own property,...the right to work,...the right to just and favorable remuneration,...[and] the right to rest and leisure."

What is a right? A right is a justified claim on others. For example, if I have a right to freedom, then I have a justified claim to be left alone by others. Turned around, I can say that others have a duty or responsibility to leave me alone. If I have a right to an education, then I have a justified claim to be provided with an education by society.

The "justification" of a claim is dependent on some standard acknowledged and accepted not just by the claimant, but also by society in general. The standard can be as concrete as the Constitution, which guarantees the right of free speech and assures that every American accused of a crime "shall enjoy the right to a speedy trial by an impartial jury," or a local law that spells out

the legal rights of landlords and tenants.

Moral rights are justified by moral standards that most people acknowledge, but which are not necessarily codified in law; these standards have also, however, been interpreted differently by different people.

### **Negative and Positive Rights**

One of the most important and influential interpretations of moral rights is based on the work of Immanuel Kant, an eighteenth century philosopher. Kant maintained that each of us has a worth or a dignity that must be respected. This dignity makes it wrong for others to abuse us or to use us against our will. Kant expressed this idea in a moral principle: humanity must always be treated as an end, not merely as a means. To treat a person as a mere means is to use a person to advance one's own interest. But to treat a person as an end is to respect that person's dignity by allowing each the freedom to choose for himself or herself.

Kant's principle is often used to justify both a fundamental moral right, the right to freely choose for oneself, and also rights related to this fundamental right. These related rights can be grouped into two broad categories—negative and positive rights. Negative rights, such as the right to privacy, the right not to be killed, or the right to do what one wants with one's property, are rights that protect some form of human freedom or liberty, . These rights are called negative rights because such rights are a claim by one person that imposes a "negative" duty on all others—the duty not to interfere with a person's activities in a certain area. The right to privacy, for example, imposes on us the duty not to intrude into the private activities of a person.

Kant's principle is also often used to justify positive or, as they are often called, welfare rights. Where negative rights are "negative" in the sense that they claim for each person a zone of non-interference from others, positive rights are "positive" in the sense that they claim for each person the positive assistance of others in fulfilling basic constituents of human well-being like health and education. In moral and political philosophy, these basic human needs are often referred to as "welfare" concerns (thus this use of the term "welfare" is similar to but not identical with the common American usage of "welfare" to refer to government payments to the poor). Many people argue that a fundamental right to freedom is worthless if people aren't able to exercise that freedom. A right to freedom, then, implies that every human being also has a fundamental right to what is necessary to secure a minimum level of well being. Positive rights, therefore, are rights that provide something that people need to secure their well being, such as a right to an education, the right to food, the right to medical care, the right to housing, or the right to a job. Positive rights impose a positive duty on us—the duty actively to help a person to have or to do something. A young person's right to an education, for example, imposes on us a duty to provide that young person with an education. Respecting a positive right, then requires more than merely not acting; positive rights impose on us the duty to help sustain the welfare of those who are in need of help.

## Conflict of Rights

Whenever we are confronted with a moral dilemma, we need to consider whether the action would respect the basic rights of each of the individuals involved. How would the action affect the basic well-being of those individuals? How would the action affect the negative or positive freedom of those individuals? Would it involve manipulation or deception—either of which would undermine the right to truth that is a crucial personal right? Actions are wrong to the extent that they violate the rights of individuals.

Sometimes the rights of individuals will come into conflict and one has to decide which right has priority. We may all agree, for example, that everyone has a right to freedom of association as well as a right not to be discriminated against. But suppose a private club has a policy that excludes women from joining. How do we balance the right to freedom of association—which would permit the club to decide for itself whom to admit—against the right not to be discriminated against—which requires equal treatment of women? In cases such as this, we need to examine the freedoms or interests at stake and decide which of the two is the more crucial for securing human dignity. For example, is free association or equality more essential to maintaining our dignity as persons?

Rights, then, play a central role in ethics. Attention to rights ensures that the freedom and well-being of each individual will be protected when others threaten that freedom or well-being. If an individual has a moral right, then it is morally wrong to interfere with that right even if large numbers of people would benefit from such interference.

But rights should not be the sole consideration in ethical decision-making. In some instances, the social costs or the injustice that would result from respecting a right are too great, and accordingly, that right may need to be limited. Moreover, an emphasis on rights tends to limit our vision of what the "moral life" entails. Morality, it's often argued, is not just a matter of not interfering with the rights of others. Relying exclusively on a rights approach to ethics tends to emphasize the individual at the expense of the community. And, while morality does call on us to respect the uniqueness, dignity, and autonomy of each individual, it also invites us to recognize our relatedness—that sense of community, shared values, and the common good which lends itself to an ethics of care, compassion, and concern for others.

*The views expressed do not necessarily represent the position of the Markkula Center for Applied Ethics at Santa Clara University.*

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