

Theories of Rights

Interest Theory

Your having a right to something means that it is in your *interest*, or is to your benefit, and someone else has a duty to provide it.

Someone violates your right by not doing his or her duty to provide the thing that is in your interest.

vs.

Will Theory

Your having a right to something means that you have control over others' free will in regard to it; otherwise, they can do as they please.

Someone violates your right by acting contrary to your will in regard to your right's object.

Moral Rights and Legal Rights

Rights are studied in both ethics and law and politics, in both the context of morality and the context of legal systems.

Moral Rights are believed to exist independently of legal systems and governments. In the *Declaration of Independence*, Jefferson's three examples are the moral rights to "life, liberty and the pursuit of happiness." He claimed that governments exist in order to secure these rights, although they might fail to do so.

Legal Rights depend on legal systems. Governments are expected to enact laws that protect moral rights, according to Jefferson. They can also grant additional rights, or not. The American government denied women the legal right to vote until 1920. 18-year-olds were granted the legal right to vote in 1971.

Rationale for the Interest Theory



Jeremy Bentham (1748-1832) initiated the interest theory. As a utilitarian, he was critical of the idea of moral rights, but conceded that the rights could be useful in legal systems. Someone would have a right to something (x), against a second person, if that person had a legal duty to provide the first person with x . For example, on Bentham's interest theory, you have a right to vote if someone is legally required to provide you with the opportunity to vote, and count your ballot, and so on.

More recent philosophers developing the interest theory, also known as the "benefit theory," think that basic moral duties to respect others' essential interests, such life and liberty, serve as the basis of moral rights. According to Joseph Raz, a recent interest theorist:

"X has a right if and only if X can have rights, and other things being equal, an aspect of X's well-being (his interest) is a sufficient reason for holding some other person(s) to be under a duty."

Animals could have interest-based rights (moral or legal), provided their interests are "sufficient reasons" for holding someone to be under a duty. It has to be specified what "sufficient reasons" means here.

Rationale for the Will Theory

Herbert L.A. Hart (1907-92), a British legal scholar, is credited with developing the will theory of rights. He cited Kant as inspiring his thinking about the importance of human freedom, or liberty. Freedom is the most basic right, according to will theory. It is a moral (or natural) right. All other rights, moral or legal, are specific protected freedoms. Limiting anyone's freedom always requires the authorization of others' rights; and the subjects of rights remain free to "claim" them or not.



The will theory, also known as the "choice theory," allows rights-holders free choice to insist upon their rights, or to waive them.

Example: your right to some land is your freedom to do with it as you wish. Everyone is wrong to interfere with your freedom unless they have a right. If someone uses your land without having a right, you are free to allow it, or to choose to prevent it by claiming the protection of your right to legal authorities.

Animals cannot have rights on the will theory. They have no conception of a basic right of freedom, and cannot understand the idea of limiting of rights; nor would they be capable of claiming or waiving rights.

Problems for the Interest Theory

1. **Limiting interests:** Specifying the set of interests that are sufficient reasons for rights is nearly impossible. The proliferation of interest-based rights continues: welfare rights; health-care rights; women's rights; animal rights; etc.
2. **Third-party interests:** If you promise to tend a neighbor's child, you have a duty, and the child has an interest in your doing your duty; so the interest theory says the child has a right to your care. But only the neighbor has the right.

Problems for the Will Theory

1. **No inalienable rights:** The freedom protected by rights includes the freedom to waive any right, including freedom to accept payment for waiving rights. Rights-holders could bargain away any of their rights.
2. **Right-holders' cognitive capacities:** having a right requires understanding how to claim or waive it, which infants cannot understand, nor can mentally incapacitated adults; so, like animals, they cannot have rights.

Possible Hybrid Theories

- An Interest Theory with a Single Interest

The only sufficient reason for rights is the interest of freedom. This limits the interest theory's rights, but this does not solve the will theory's problems with inalienable rights, etc.

- A Will Theory with Duty-Based Restrictions

Basic interests in life, freedom, etc., are the basis for duties not to take lives, restrict freedom, etc., creating inalienable rights. But the interest theory's interest-limiting problem remains.