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AUTONOMY AND RIGHTS

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Introduction

In this chapter, I discuss the relationship between personal autonomy and rights. According to the Interest Theory, rights are correlative with duties that are justified on the right-holders’ interests. On the Choice Theory, the point of rights is to enhance autonomous choice by giving right-holders powers to control the correlative duties. Instead of the Choice Theory, I propose an Autonomy Theory of rights. This theory defines rights on the basis of their justification in autonomy and so naturally leads to explore the connections between autonomy and moral rights.

Like other authors, I distinguish between real-self autonomy and independence autonomy. Since there are two notions of personal autonomy, I argue that rights are connected to autonomy in two different ways. Along the real-self autonomy dimension is the principle of autonomous character formation. Along the independence autonomy dimension are the principles of self-direction and the principle of inviolability.

I discuss the connections between moral rights and those three principles. The principle of autonomous character formation grounds rights against centralized cognitive control and centralized motivational control. Then, I focus on the principles that secure independence autonomy. The principle of self-direction bars coercive and paternalistic interventions in people’s free choices. The principle of inviolability grounds moral side constraints that forbid the interpersonal maximization of utility and rights-compliance.

1. The Autonomy Theory of Rights

There are two main theories about the nature of rights. These theories are the Interest Theory and the Choice Theory. Though these theories are formulated with respect to legal rights, they can be extended, mutatis mutandis, to moral rights.

The Interest Theory was first suggested by Bentham, in a formulation that Hart critiqued under the name “the Benefit theory”. However, the Interest Theory was introduced in European jurisprudence by Rudolf von Ihering, who defined a (legal) right as a “legally protected interest” (von Ihering 1906: 339). In its present canonical version, offered by Neil MacCormick and Joseph Raz, the Interest Theory holds that A’s having a right to X against
B means that an interest of A’s (or an aspect of his well-being) is a sufficient reason for holding B under a duty to X (MacCormick 1976, 1977; Raz 1984; Raz 1986: 166).

H.L.A. Hart made the Choice Theory of rights popular in Anglo-American legal theory, but the theory can be traced back to Kant (Simmonds 1998: 179). The Choice Theory analyzes rights correlative with obligations, as established in civil law, in terms of legally protected choices. Under the Choice Theory, a right expresses the idea of

one individual being given by the law exclusive control, more or less extensive, over another person’s duty so that in the area of conduct covered by that duty the individual who has the right is a small-scale sovereign to whom the duty is owed.

(Hart 1982: 183)

Hart goes on to say that the “fullest measure of control” comprises the power to waive or extinguish the duty or leave it in existence; the power to enforce the duty by legal actions after actual or threatened breach of the duty or to leave it unenforced, and the power to waive or extinguish the obligation to pay compensation for violation of the duty (Hart 1982: 183–84). In centering around the notion of a legally respected individual choice, the Choice Theory emphasizes the connection between rights and autonomy. On this account, rights serve autonomous choice. How rights are enjoyed depends on the autonomous choices of the rights bearer. Hart acknowledges that some kinds of rights cannot be explained by the Choice Theory. Thus, he says that, unlike rights in civil law, constitutional rights are immunities from disadvantageous deprivations by the legislature (Hart 1982: 190–191).

Elsewhere I have argued that the Choice Theory is a fragment of an autonomy-based account of rights (Spector 2007: 292–293; Spector 2009: 829–830). The problem is that the Choice Theory presupposes but does not spell out the grounding of rights in autonomy. The Autonomy Theory of rights says that rights protect personal autonomy both directly by forbidding actions that thwart the exercise of autonomous choice and indirectly by awarding rights-holders the normative powers to create, transfer, waive, and extinguish those duties that are correlative with rights. Unlike the Interest Theory, the Autonomy Theory emphasizes that rights-correlative duties are not justified on their role in protecting the interests of rights holders but rather on their role to enable people to realize their autonomous projects.

To disclose the two-pronged foundation of rights in personal autonomy (that is only partially captured by the Choice Theory), I propose to analyze rights as typically based on people’s autonomy (in the two senses discussed in the following section). Accordingly, the concept of rights in liberal morality can be discerned via the following propositions:

1. **Value Justification of rights**: A has a right to X against B if A’s autonomy justifies B to be under a duty to secure X for A.

2. **Deontic Consequences of rights**: If A has a right to X against B, A has the maximum measure of control over B’s duty to secure X for A that is compatible with B’s duty being justified on A’s autonomy.

These propositions are connected because the deontic consequences of rights flow from their autonomy-based justification. Unlike the Choice Theory of rights, the Autonomy Theory of rights does not imply that all rights are alienable or waivable. Thus, the inalienability of
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some moral rights flows from the fact that transferring or relinquishing those rights is incompatible with their being based on autonomy. For example, no one could make an indentured servitude contract (by which he consents to being enslaved by someone else) in a way that is consistent with the justification of rights in autonomy.

The Autonomy Theory is similar to the Choice Theory. However, the Autonomy Theory spells out the two-pronged justification of rights. First, rights protect autonomous choice directly by forbidding attacks on personal autonomy (harming, bullying, domineering, etc.). Second, they enhance autonomous choice indirectly by giving people normative powers to control rights-correlative duties (transferring, waiving, extinguishing, etc.). The Autonomy Theory relies on this two-pronged justification to endorse the inalienability of fundamental rights.

The Choice Theory tends to defend a greater measure of control by the right-holder because it does not constrain the scope of rights in terms of their autonomy-based justification. By contrast, the Autonomy Theory includes a measure of voluntary control of correlative duties as part of the definition of rights, but also constrains that extent based on the justification of rights in the autonomy of right-holders. In addition, the Autonomy Theory of rights suggests that we should look for the moral foundations of rights in the ideal of autonomy.

2. Independence Autonomy and Real-Self Autonomy

There are two conceptions of personal autonomy: “real-self autonomy” and “independence autonomy” (Wolf 1990: 26–35; 1993; Arneson 1994: 54). These notions can also be called, respectively, “non-alienation” and “sovereignty” (Christman 2009; Enoch 2017: 32; Enoch 2020: 162; Enoch 2021: 2–3). We can understand real-self autonomy as the state of a person whose choices truly express, reflect, and result from her real or nonalienated self. And we can define independence autonomy as the state of an individual who chooses and carries out his own life plans based on his preferences, evaluations, and volitions (without being ruled or coerced by others).

One obvious question is whether the two conceptions of autonomy are logically connected. Both independence autonomy and real-self autonomy are conditional state of affairs. Indeed, these notions can be formulated through the following conditionals:

**Independence autonomy**: If S does φ, then S’s φ-ing is caused by S’s choice to φ.

**Real-self autonomy**: If S chooses to do φ, then S’s φ-choosing reflects S’s real self.

These two propositions refer to connected but independent senses of autonomy. They are connected in that an agent can only be fully autonomous in being autonomous in both senses, and full autonomy is more valuable than either independence autonomy or real-self autonomy alone. They are independent in that an agent can be autonomous in one sense, but not in the other. Thus, in doing φ a person can be autonomous in the independence sense as a result of her choosing to φ and still not being autonomous in the real-self sense if her φ-choice does not reflect her real or nonalienated self. For example, an industrial laborer can have independence autonomy if he chooses to work in a sweatshop for a multinational corporation as the only alternative to being unemployed. However, we might argue that his choice does not reflect his real self, but rather his narrow menu of choice. Therefore, we might want to say that he lacks real-self autonomy. Conversely, a person might have real-self autonomy without independence autonomy. For example, one evening an adventurous young person chooses to share a beer with his friends during
the COVID–19 pandemic. He possesses real-self autonomy in that his choice truly reflects his self. However, he lacks independence autonomy if he is coerced into remaining at home by the police monitoring the curfew.

Though independence autonomy is a state of affairs, it is also a fundamental value in political liberalism (Raz 1986: 203–207; 369–395). Thus, liberals attach great value to independence autonomy because they abhor slavery, domination, and other forms of unfreedom. Similarly, independence autonomy is connected to rights against noninterference and to positive and negative freedom (Lomasky 1987: 56–61; Spector 1992: 90–100).

When we shift from autonomy to the value of autonomy, we notice that real-self autonomy has normative priority over independence autonomy. It is not that independence autonomy is instrumentally valuable to real-self autonomy. Instead, the relation is constitutive. Real-self autonomy and independence autonomy are valuable as parts of a valuable complex process, namely, the process by which the real self of a person shapes that person's choices and actions. It would be unreasonable to set much store by independence autonomy if the person's choices were informed by an alienated self. If the choices that cause someone's actions do not reflect her real self, why would causation of her actions by her choices be valuable? The value of independence autonomy presupposes, in a constitutive sense, the value of real-self autonomy. So even if an agent chose and made her own life (that is, even if she possessed independence or sovereignty), she could fail to lead an autonomous life if her choices were caused by nonautonomous preferences and judgments.

3. Real-Self Autonomy and the Principle of Autonomous Character Formation

In this section, I consider the relation between rights and real-self autonomy. Some preferences are formed in nonautonomous ways and cannot be considered reflective of someone's real self. An open society favors real-self autonomy by making it less likely that preferences are formed by nonautonomous mechanisms. Since preferences are shaped by cognitive and motivational factors, autonomous preference formation requires a favorable cognitive and motivational context. I argue that the principle of autonomous formation of character grounds rights against cognitive centralized control and motivational centralized control.

By cognitive centralized control, I mean the control of information by governmental agencies. The dystopian example of this kind of control is the Ministry of Truth in George Orwell’s Nineteen Eighty-Four. The function of this ministry is to adjust social beliefs so that the Party’s narrative always looks true to the people in Oceania. In real-world autocratic countries, governments can control citizens by diffusing misinformation. North Korea is an example of centralized cognitive power. The government controls all the media and news, which are distributed by a state–monopolized news agency. Citizens don’t have access to the Internet, or to social networking. One state–owned intranet service releases propaganda favorable to the government. All educational institutions are run by the government. Overall, the government severely punishes social and political criticism, and its propaganda shapes the perception of citizens about the outside world and about the merits of different social arrangements.

While freedom of the press is a fundamental aspect of independence autonomy in the political realm, real-self autonomy requires a deeper form of freedom. Self-development can only flourish if competitive, diverse, and inclusive educational and informational structures are put in place. In societies where preferences are formed by authoritarian cognitive control, even if citizens individually and collectively do what they want to, their behavior does not express their real-self autonomy. A similar though less visible power can be exercised
over children in state-run educational programs. For instance, syllabuses and instructional modalities may deprive students of the critical resources to question the society’s practices, securing the maintenance of the social and political status quo.

The second aspect of the right to autonomous character formation protects against centralized motivational control. Authoritarian governments can manipulate mechanisms of preference formation by creating biased or stereotypical representations of social situations or social actors. But governmental intervention is not a necessary feature of this type of control. A dominant culture can exercise centralized motivational control as well. For example, in her classic book *The Second Sex*, Simone de Beauvoir examines the cultural and social constructions that enable patriarchal domination of women. In so far as social structures induce the formation of nonautonomous preferences, real-self autonomy is affected, even though forming preferences that conform to the dominant social practices may be a rational way of avoiding alienation and frustration.

One kind of such nonautonomous preferences are adaptive preferences (Spector 2013). Jon Elster has explored these mechanisms as forms of subverting rationality (Elster 1983: 25, 174). In his example, taken from Aesop’s well-known fable *The Fox and the Grapes*, the fox convinces himself that the inaccessible grapes are sour and develops an adaptive preference for the accessible grapes (Elster 1983: 22–25; Elster 1996). Elster says that adaptive preferences are “a purely causal process of adaptation, taking place ‘behind the back’ of the person concerned” (Elster 1983: 118). However, sometimes adaptation to the environment is a sign of mental health. Since societies are only workable against a background of social and political constraints, some nonautonomous preferences can be functionally adaptive in that they contribute to social cooperation. Generally, the expression “adaptive preferences” is not applied to useful nonautonomous preferences. The question is to determine what kinds of adaptation are functional or dysfunctional.

Dysfunctional adaptive preferences seem incompatible with real-self autonomy. What test could we use to pick out nonautonomous preferences? Revising his historical conception, Christman proposes a test for real-self autonomy based on nonalienation upon sustained critical reflection (Christman 1991; Christman 2009: 153). Thus, a characteristic $C$ (e.g., a preference) is autonomous if the agent would not be alienated from it (“in the sense of feeling and judging that $C$ cannot be sustained as part of an acceptable autobiographical narrative organized by her diachronic practical identity”) if she were to “engage in sustained critical reflection on $C$ over a variety of conditions in light of the historical processes (adequately described) that gave rise to $C$” (Christman 2009: 155). Dysfunctional adaptive preferences, and, in general, preferences shaped by centralized motivational control (e.g., preferences formed through brainwashing) are not likely to meet this test.

Other views specifically address the relation of adaptive preferences to autonomy. Ben Colburn distinguishes between character planning and adaptive preference formation (Colburn 2011). He understands autonomy as independence autonomy: “deciding for oneself what is valuable, and living one’s life in accordance with that decision” (Colburn 2011: 62). On Colburn’s view, independence is only possible if someone’s commitments or values are not covertly influenced, and they are covertly influenced when the explanation of those commitments and values appeals to a fact or state of affairs (e.g., subliminal advertising) that would lack explanatory power if it were not hidden (Colburn 2011: 64). Colburn argues that, “[C]overt influence on an agent’s commitments is bad for autonomy, because it undermines the extent to which we can say she herself is deciding on what is valuable” (Colburn 2011: 66). Unlike character planning, adaptive preference formation is always covert (Colburn 2011: 68).
Elsewhere I have suggested that adaptive preferences are those that an agent would not have formed in the face of an adequately larger compass of options, where “adequately” refers to options that society should have made available to the agent, according to various moral or normative criteria (Spector 2013). My point is that adaptive preferences imply an impermissible curtailment of the options open to the agent. If the curtailment of options is permissible, the preferences formed as a result of the narrower set cannot be called “adaptive”. Thus, if a society oppresses some of its groups to maintain a hierarchical structure, their members’ preferences to play the assigned social roles are more likely formed by adaptive mechanisms (Elster 1983: 130–131). I borrowed a story from Stendhal’s *The Red and the Black* to illustrate a nonautonomous adaptive preference. Julien Sorel’s choice for a religious career was caused by an adaptive preference, as he would have formed a dominant preference for a military career if the French society at the time of the Restoration had permitted this career for a young man of his class.

Similarly, David Enoch suggests that if the feasible set has been caused by an injustice, then the preference is adaptive (Enoch 2020, 185). Enoch’s account is based on the causal relevance of injustice. But an injustice only produces adaptive preferences if it creates an impermissibly narrow profile of options, in whose presence some agents are led to develop preferences that they would not develop in a different, permissible context. Indeed, a social injustice could causally open some career pathways and close others, and preferences for these new career pathways would hardly be called “nonautonomous”. For instance, violations of human rights in a country (a paradigmatic example of injustice) might open up the possibility of following a career as a human rights lawyer and may cause the formation of a student’s preference for this career. However, even if the causal history of this preference formation includes an injustice, the preference formed as a consequence of this injustice is autonomous.

Some mechanisms of nonautonomous preference formation include both cognitive and motivational factors, so the distinction between cognitive and motivational centralized powers is in practice difficult to draw. At the limit, a person’s worldview and personhood can be simultaneously manipulated by a centralized power. One fictional example of this kind of totalitarian control is the nonautonomous character development of Truman Burbank in the famous movie *The Truman Show*. An executive producer plans Truman’s character and set of beliefs as part of a reality TV program. Truman’s actions are caused by his choices, and his choices are based on Truman’s preferences. But those preferences are not really Truman’s because they have been formed by cognitive and motivational centralized control. Rights against both cognitive and motivational centralized power protect authentic self-development and contribute to the value of more familiar rights based on independence autonomy.

### 4. Independence Autonomy and the Principle of Self-Direction

Independence autonomy protects free action based on the agent’s choices and preferences. There are two main connections that have been discussed in the literature. The first connection holds between rights and self-direction. The second connection holds between rights and personal separateness. In this section, I address the first.

The principle of self-direction awards people discretion to pursue their own lives in accordance with their personal choices and judgments. It protects people’s capacity to direct their lives according to their own judgments and choices. Thus, the principle of self-direction protects individual sovereignty by awarding an individual the right to direct his own life without the interference of other people. This I have called elsewhere the *right to positive freedom* (Spector 1992: 97–98).
Individual sovereignty is threatened by various interventions into people’s choices. The typical cases are coercion and paternalism. Coercion curbs self-direction by forcibly removing certain options from the agent’s menu of options. One way in which coercion can be impermissible is by worsening the coercee’s position as compared with a relevant baseline. Now the baseline can be factual or moralized, and the selection of the baseline determines the moralized or nonmoralized character of the account. Nozick offers a well-known conception of coercion in terms of Lockean rights (revising an earlier position) (Nozick 1969; 1974). Alan Wertheimer also defends a moralized conception (Wertheimer 1987). Under a moralized conception, an interference with someone’s independence autonomy is deemed coercive only if it is impermissible. A moralized conception of coercion yields more plausible outcomes, but it cannot be used as a foundational concept in political theory. Conversely, a nonmoralized conception can justify normative principles, but tends to produce implausible upshots. For example, a nonmoralized account could imply that unions’ interference with corporate decisions is coercive.

I suggest a simple way in which a nonmoralized conception of coercion could serve normative purposes without producing implausible upshots. Independence autonomy does not mean unconstrained freedom, as any state must impose constrains on autonomous choice. The question then is to establish the critical degree at which coercion becomes impermissible. Is there any way of fixing this degree? Suppose we measure the total extent of social coercion in terms of the opposite concept of positive freedom. In turn, we define positive freedom on the basis of the number of alternative actions an agent is capable of performing, the contribution of an action to the achievement of a valuable human life, and the extent of real power or capability the individual has to perform an action. Then, we gauge the impact of incremental variations of coercion on the overall measure of positive freedom. If we depart from a state of nature, the initial degree of coercion by the state is zero because there is no state. However, we have a high degree of unorganized social coercion, and, correlatively, a very low level of overall positive freedom. Imagine that we set up a state and increment the degree of state coercion by gradually awarding government ampler powers. Progressively we diminish the degree of overall coercion and augment the degree of overall positive freedom. However, as we increment the degree of state coercion, at some point, we will start diminishing the degree of overall positive freedom. It is theoretically possible to fix the point of optimal coercion or, alternatively, the degree of optimal positive freedom in a given society. This statement is factual or empirical but does not necessarily yield implausible results. Instead, it justifies a judgment that fixes the degree at which a marginal increment of coercion is impermissible. Thus, we might say that the principle of self-direction entails a sort of right against supra-optimal coercion. Therefore, a nonmoralized account of coercion could be used to produce plausible normative upshots.

Paternalism also infringes individuals’ right to self-direction. For instance, if the state imposes on the public the obligation to vaccinate against a disease, it infringes their right to direct their lives. (I assume that the option of refusing vaccination counts as a form of directing one’s life.) But the infringement might be justifiable for various reasons. The vaccine may prevent the disease and eradicate the virus that causes it. If the state intervention is morally justifiable as a form of protecting someone’s right to positive freedom, it does not violate the rights founded on the principle of self-direction. Those rights are not absolute. Only unjustifiable infringements can be considered right violations.

Elsewhere I have suggested that government A’s paternalistic intervention toward citizen S could be justified if it caused a significant net benefit in terms of S’s positive freedom (Spector 2021). This means that ordinary gains of positive freedom are not enough. S’s right to self-direction is founded on his status as an autonomous person and invasions to this right
must accordingly satisfy a higher moral bar. The point is that paternalistic interferences with S’s autonomy are not justified merely by their producing a net gain of S’s positive freedom. Justifiable infringements must produce large intrapersonal gains of positive freedom. The rationale is that an individual, acting by his own lights, might inflict himself a loss of independence autonomy that is much more serious than the loss caused by the paternalistic intervention. At some point, S’s self-inflicted loss becomes so large that A’s paternalistic intervention becomes justified. Even if the intervention curtails S’s personal sovereignty, S’s choice cannot be considered autonomous and, therefore, the seriousness of the attack on autonomy is attenuated. If government A can protect S’s autonomy by paternalistically preventing a huge self-inflicted loss of S’s positive freedom, it is absurd to object to it in the name of autonomy.

5. Independence Autonomy and the Principle of Inviolability

The second connection between rights and independence autonomy is the connection between rights and personal separateness. By “personal separateness”, I understand the rejection of maximization through interpersonal aggregation. The principle of inviolability grounds moral rights that protect individuals from interpersonal maximization (Nino 1991: 149). Robert Nozick calls the moral requirements that protect individual inviolability “side constraints” (Nozick 1974: 30–31). For Nozick, side constraints are moral prohibitions of the form “Don’t violate constraints C”. Thus, side constraints forbid treating people in certain ways no matter the overall benefits that could be obtained by alternative conducts. Accordingly, side constraints may not be infringed in principle even if by infringing them the agent can produce greater utility overall and even if he can minimize the overall violation of side constraints.

Nozick claims that violating someone’s rights to produce greater utility overall or prevent other people’s rights from being violated is morally on a par with using a person for the benefit of others. It might be permissible to infringe someone’s rights to maximize overall utility or the overall compliance with rights if there were a social entity that undergoes a sacrifice for maximizing its own good. Since there is no such social entity, he argues that that justificatory route is closed. Nozick fails to consider other possible justifications. He contends that using one person for the sake of others “does not sufficiently respect and take account of the fact that he is a separate person” (Nozick 1974: 33).

Nozick claims that side constraints are ultimately founded on the idea of individuals as ends-in-themselves:

Side constraints upon action 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.

(Nozick 1974: 30–31)

Loren Lomasky supplements Nozick’s insights. He holds that the fact that persons are project pursuers explains why there not a single standard of value in terms of which all persons’ ends are commensurable and interchangeable (Lomasky 1987: 53–54).

Both self-direction and personal separateness play roles in the explication of side constraints, but those roles are not clearly differentiated in Nozick’s argument. In my view, the concept of “exclusionary reasons” casts light on side constraints and their relation to self-direction and personal separateness (Raz 1999: 185). To start with, it is simplistic to say that
side constraints are moral prohibitions. In effect, side constraints are moral reasons protected by exclusionary reasons. We can explain the roles of self-direction and personal separateness by unveiling the structure of side constraints. First, side constraints are moral reasons not to harm or sacrifice persons. These moral reasons protect individuals as independent persons and are ultimately based on an individual’s real-self autonomy (Spector 1992: 90–94). In effect, real-self autonomy can realize its full value only if an individual also has independence autonomy, and this fact justifies the moral reasons against harming or sacrificing individuals. Second, the moral reasons to treat others as independent are protected by exclusionary reasons that disable competitive moral reasons based on the interpersonal maximization of moral or nonmoral values. Personal separateness justifies these exclusionary reasons. Because individuals are separate persons, moral reasons based on aggregate maximization must be in principle disabled. To sum up, side constraints include moral reasons against harming or sacrificing other individuals based on self-direction as well as exclusionary reasons that preempt moral reasons that offend personal separateness. Therefore, the inviolability of individuals as ends-in-themselves is based on the normative status of individuals as sovereign and separate persons.

According to the theory developed by Frances Myrna Kamm and Warren Quinn, the principle of inviolability is not founded on autonomy but rather expresses the normative status of autonomous beings (Kamm 1996: 260–261; Quinn 1993: 173; Nagel 1995: 85–86). Side constraints are the correlates of moral rights constituting inviolability as a normative status. As I said, this normative status is related to the separateness of persons. The theory about the normative status of individuals can rationalize the preemption of the interpersonal maximization of utility. In fact, side constraints preempt the infringement of moral rights as a means to maximize aggregate utility. If a moral system justifies the infringement of rights on utility maximization, it fails to award individuals the status of autonomous persons. Expressed in terms of positive freedom, moral rights protect the autonomous status of persons in forbidding the sacrifice of their positive freedom for the sake of the aggregate maximization of positive freedom (Spector 1992: 154–162).

A complete account of side constraints and their correlative moral rights must explain not only the rejection of the maximization of a nonmoral value (i.e., interpersonal utility) but also the rejection of what Nozick calls “utilitarianism of rights” (Nozick 1974: 28–29). Utilitarianism of rights mandates the minimization of rights violations (i.e., the interpersonal aggregation of a moral value). Here, Kamm appeals again to the moral inviolability of persons (Kamm 1996: 262–264). She says that a person is inviolable if, and only if, it is impermissible for an agent to harm her even though by doing so the agent can minimize violations of the restriction against harming. Kamm contends that side constraints forbid minimizing violations because the best moral system is one that guarantees the status of persons as ends-in-themselves by minimizing the situations in which agents can permissibly harm them. Kamm’s view is that autonomous persons must have a special moral status, and this status entails the preemption of moral reasons that could favor interpersonal maximization of the compliance with moral rights to the detriment of an agent’s rights to independence autonomy. Therefore, the status of autonomous persons entails the preemption of both the interpersonal maximization of utility and the interpersonal maximization of rights-compliance.

Side constraints entail that people cannot be permissibly subordinated to the ends of others, even when that is necessary to ameliorate the effects of imperfect moral compliance. Kamm’s explanation of this feature of moral rights (often called “agent-relativity”) is not unchallenged. Lippert-Rasmussen critiques the proposition that morality reflects the status of
persons as ends-in-themselves by establishing side constraints. He dismisses this explication of side constraints by contending that when a moral system guarantees inviolability, it attacks the status of persons in a different way, that is, by allowing agents to let people be harmed when others do not comply with moral requirements (Lippert-Rasmussen 1996).

I have argued that the problem with Lippert-Rasmussen’s critique is that it misunderstands the role of moral status in the justification of side constraints (Spector 2014). When others do not comply with side constraints, their conduct is wrong. However, when a moral system denies inviolability, it justifies the infringement of side constraints. This contrast illuminates the notion of moral status. My point is that there is an asymmetry between a moral system requiring or normatively permitting a violation of a side constraint and a moral system de facto allowing such violation by not requiring its prevention (letting it occur).

Side constraints are based on an asymmetry between a moral system permitting or requiring offending against individual inviolability and a moral system merely letting an offense against inviolability to occur (by an agent’s act or someone else’s omission). We might say that morality distorts the status of persons as ends-in-themselves when it permits or requires sacrificing other people, even if the sacrifice is needed to minimize the overall violation of rights. Thus, morality fails to guarantee the moral status of persons as ends-in-themselves if it permits an agent to sacrifice someone else for maximizing a nonmoral or moral good.

Conclusion

I have shown that the Autonomy Theory of rights spells out the conceptual connection between rights and autonomy. This theory defines rights in terms of both their autonomy-based justification and the normative powers of right-holders. The conceptual analysis of rights leads to the exploration of the foundation of rights in personal autonomy.

Moral rights are founded on three fundamental principles that derive from the two notions of autonomy: real-self autonomy and independence autonomy. The principle of autonomous character formation guarantees real-self autonomy and grounds rights against centralized cognitive and motivational control. The principles of self-direction and the principle of inviolability protect independence autonomy. The former protects personal sovereignty and so bars unjustifiable forms of coercion and paternalism. The principle of inviolability constitutes the normative status of individuals as autonomous persons by preempting the interpersonal maximization of moral and nonmoral values.

References


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