

CONFLICTS OF RIGHTS AND DUTIES: A CRITIQUE OF JOSEPH RAZ'S THEORY

¹MARAIZU ELECHI (PhD)
Department of Philosophy
Rivers State University
Port Harcourt, Rivers State, Nigeria
drmaraizuelechi@yahoo.com

&

²JUDITH NGIHBI
Department of Philosophy
Rivers State University
Port Harcourt, Rivers State, Nigeria
mambujudith@gmail.com

Abstract

The nature and sources of rights and duties have continued to generate interest among scholars and intellectuals across disciplines such as philosophy, law, political theory, and ethics. Joseph Raz is one of those scholars who theorized about rights and duties. According to him, there are two kinds of rights: Core rights and Derivative rights. He claims that Core rights are grounds for duties and duties impose a command for an action. Raz argues that interests justify rights, while rights justify duties, and that it is possible for duty-bearers to resolve dilemmas on account of attenuating circumstances, rather than on account of the grounding dependency of duty-bearing in relation to the rights-claim. This paper, therefore, investigates the conflict between Core and Derivative rights and examines the distinction between Core right in relation to the conflict of rights by Raz. It critically appraises the logic of resolving conflicts of rights and duties and argues that rights and duties cannot be mapped upon the logic of grounding. We shall argue that rights and interest do not share equivalence, but that rights certainly entail duties, and the grounds for duties need not follow from the interest of rights.

Keywords: Rights, Duties, Claimability, Interest, Conflict, Philosophy.

Introduction

There are varieties of rights and duties. Such rights could be classified as doctor's rights, students' rights, teachers' rights, etc. On the other hand, duties are categorized as employers' duties, parent duties, teachers' duties, and duties that we owe our communities (Nieswandt, 2022, p.3). The practice of rights and duties is commonly expressed in larger organisations and different religious sects. In the claimability of rights and duties, some people have been killed for the right of their religion. However, different kinds of rights are grouped under the branch of ethics, political philosophy, and law. By extension, the notion of rights and duties are relevant in economics, technology, and architecture.

In his article "On the Nature of Rights", Joseph Raz avers that rights are "grounds of duties in others and these duties grounded in a right may be conditional" (1984, p. 196). He also distinguished between 'core' and 'derivative' rights (1984, p. 198). However, as Raz observes, the ambiguous claim that "to every duty, there is a corresponding right," (1984, p. 199) gives the impression that A's duty to satisfy B's right is necessarily grounded either on B's core rights or on B's derivative rights. But, given that a core right provides a more ultimate grounding of a duty than a derivative right, it follows that when duty fails to be justified on grounds of a core right, it cannot equally be justified on a right derived from the core right. This logic of dependency of the derivative rights on core rights and the parallel justification for duties on rights (core or derivative) seem to fall apart in cases of conflicts of rights, which can arise either between several (at least two) core rights, several (at least two) derivative rights or between a mixture of core and derivative rights.

We shall argue in this paper that the logic of resolving conflict of duties cannot be mapped upon the logic of grounding (i.e. dependency relation of rights and duties), since it is more feasible for duty-bearers (when faced with conflictual interests of right-claimers) to resolve their dilemma on account of attenuating circumstances rather than on account of the grounding dependency of duty-bearing in relation to the rights-claims.

To realize this goal, in the first part of this paper, we will consider as briefly as possible, the weight of the significance of Raz's distinction between core and derivative rights in relation to conflict of rights. In the second part, we will follow the logical conclusion of the notion of rights as 'grounds of duties' by demonstrating its implications for the claimability of rights when duty-bearers fail to satisfy claimed rights. Third, we will sieve out inferential claims on the insufficiency of Raz's 'interest-criteria' of claimed-rights for holding others accountable as duty-bearers of claimed rights. In the final part, we will attempt a general synopsis.

The Notions of Rights and Duty

The term *right* has many connotations. But it is used here to refer to claims by individuals or groups about something they deserve. The basis of the claims is informed by the nature or kind of right in question. The basis or justification of a claim to a particular right may be inherent or natural, legal, moral, and so on. It is crucial to note that the word *right* is a general term, hence, in concrete situations of life, one rarely asserts that someone has a right without indicating what rights he has, just as one does not normally mention that a person is subject to a duty without saying something more about what duty it is. Rights, according to the Stanford Dictionary, are the privileges to conduct particular activities, to be in specific states, or to demand that others refrain from performing those actions or from being in such situations. Rights are legitimate claims or that which belong to a person by the sheer fact of his being as an epi-centre of existence or what others are obliged to grant a person as a member of political society (Njoku, 2002, p. 176). Rights are what a person is entitled to claim by virtue of the provisions of natural and social justice (Njoku, 2002, p. 179). The place of social justice is simply that it regulates interpersonal and social relations and the external conduct of human beings as a sure and dependable ethico-political foundation of society (Elechi, 2019, Pp. 186-187). For Nozick, rights are "side restrictions" that limit behaviour. No one is allowed to take on any activities that would violate the rights of others. Sometimes one may state of another that he has rights in order to indicate that he is the kind of creature who is capable of having

rights. For example, one may say that slaves have (legal or moral) rights, that partnerships have rights, or that foetuses have rights. (Similarly, one may say that the monarch has duties, etc.). The fact that assertions of rights are rare does not invalidate the definition, nor does it detract from its value as the key to the explanation of all rights.

There indeed is much about statements of rights that cannot be learned from one's definition alone. One needs to distinguish a right to act from a right in an object, and that from a right to an object, and that from a right to a service or a facility, and that again from 'a right to where the dots stand for an abstract noun'. A right to use the highway, for example, is a liberty right to use the highway or a right to have that liberty. A right in a car may be a right of ownership in the car or some other right in it. Detailed explanations of rights are in part linguistic explanations (a right to a car differs from a right in a car) but in part, they depend on the political, legal, or moral argument. The proposed explanation is meant to be neutral concerning all such detailed questions. At the same time, it aims to encapsulate the common core of all rights, and thus help to explain their special role in practical thought. Some discourses of rights are of rights as viewed from the point of view of a certain system of thought, such as when one compares Kantian rights with Utilitarian rights. Prefixing an adjective to 'rights' is one way to indicate that the speaker does not necessarily accept the existence of the right and is merely considering the implications of a system of thought. (On other occasions such adjectives identify the contents of the rights, e.g., economic rights, or their source, e.g., promissory rights, or both). Rights are grounds for duties in others.

Duty, on the other hand, is a commitment or expectation to carry out a specific action on a regular basis or in specific situations. It is an obligatory responsibility that one is required to perform or not to perform. One's duties can be legally based or a product of conscience. If it is legally based, then it is a matter of the fulfilment of an agreement or promise but if it is a dictate of conscience, then it is a moral obligation. Hence, the duties grounded in a right may be conditional. Consider the duty of an employee to obey his employer's instructions concerning the execution of his job. It is grounded in the employer's right to instruct his employees. But it is a conditional duty, i.e., a duty (in matters connected with one's employment) to perform an action if instructed by the employer to do so. When the condition which activates the duty is an action of some person, and when the duty is conditional on it because it is in the right-holder's interest to make that person able to activate the duty at will, then the right confers a power on the person on whose behaviour the duty depends. Thus, the employer's right over the employees is a ground for his power to instruct them. This power is one aspect or one consequence of his right. But the very same right also endows him with the power to delegate his authority to others. It can if he chooses to delegate authority, become the source of power for one of his subordinates. In that case, the employee will have a duty to obey the person in whom power was vested and that duty as well as the power of the delegated authority is grounded in the right of the employer. For the sake of simplicity, we shall not dwell specifically on rights as the grounds of powers.

Conflicts of Rights and the Distinction of 'Core' versus 'Derivative' Rights

There are rights and duties which are correlated i.e. when people are meant to keep a promise, the promise constitutes the right to keep it. The idea of the correlation between rights and duties comes in. The two are interwoven and cannot be separated from each other(Thomas,

2011, p. 2). Following Raz's "principle of capacity to have rights" (1984, p.195), it is correct to say that he considers rights as claims which protect interests (or well-being). Hence, one can conclude that when a right fails to protect certain particular interest(s), it may as well cease to be a claimable obligation in relation to the duties which it grounds. If this implication is correct, then it is possible to substitute Raz's notion of rights with that of 'interest', which right-claims expect duty-bearers to satisfy. Understood in this sense, it follows that the distinction between core rights and derivative rights can be laid out alternatively as a distinction between core *claimable* interests and derivative *claimable* interests. This extended reading of Raz's notion of rights in the light of claimable interests supplies the loopholes through which the whole logic of dependency of grounding begins to crack.

Before we consider Raz's distinction between core and derivative rights, let us first all consider why this notion of rights as claimable interests is reductive. Contrary to Raz's assumptions, we argue that rights and interests do not share equivalence relations (i.e. reflexive, symmetric, and transitive). A typical example can be shown with the right to free speech and the interest (well-being) of its claimants: Assuming that interest and well-being are slightly distinguished but are taken within the same connotative sense, we can call A's right 'x' and A's *interest* in claiming x, we call 'y' and then A's *well-being* which this interest satisfies in A can be called 'z'. Now, x, y, z can be shown to fail the equivalence test in at least one of several scenarios, namely, that of transitivity: when A's exercise of *the right* to free religious activity 'x' results in diminishing A's political *interest* 'y' and as such fails to serve A's well-being 'z'. Given this logical in-equivalence, it is shown that the nature of rights is not exhaustible from the perspectives of interests and well-being. This implies as well that the duty which rights grounds can fail to oblige *simpliciter* if the interests which claim to right protect are no longer feasible. It can also be shown that 'x' (right to free speech) is not symmetric with 'y' (interests of A in claiming this right) since it can be said that a right is claimed in view of the interest hoped for but interest is not claimed because of a right to claim it since if one's interest is served by forfeiting the right, he or she may as well forfeit it in order to still claim the interest offered by the forfeiture, should the distributive legal system decide to stop offering the same interest to claimants but rather to non-claimants.

Let us then consider what remedy Raz's distinction of core and derivative rights could suggest in this aporia. Let us say that the above-described religious right 'x' is derivative from the provisions of the legal system on 'free associations' 'w' (i.e. core right), which grounds it. But this same right to 'free associations' 'w' also is the ground for the derivative right to political engagement. Now we have two derivatives that offer Mr. A conflicting interests 'y₁' and 'y₂'. For the sake of presenting Raz's positions, we have to leave aside the already proven inequivalence of rights and interest and maintain, on account of his reductive description of rights as interest-laden, that a conflict of interest is equivalent to a conflict of rights. This conflict of derivative rights (*per interests*) is one of three examples of conflictual situations noted in the earlier paragraphs of this essay (Raz, Pp. 197-198). Now, this conflict does not disappear, even if we take both religious and political rights to be core rights, and subsequently, list other derivative rights there from. Either way, the distinction between core and derivative rights does not resolve claims. Let us now turn to the question of the grounding of duties on account of interest-laden features of claimable rights.

Rights as Grounds of Duties versus 'Claimability' of Breach of Duties

In the daily expression of rights and duties practice of life, two questions are often asked: Is it possible to have rights without duties? Or are duties possible without rights? The relationship between moral rights and duties comes to play. However, some moral theorists strongly believe that the relationship of rights is bound to a moral duty (Thomas, 2011, p.1). According to Raz, "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" (1984, p. 195). Jeremy Waldron has described such a grounding of duties on account of claimed rights as follows: When A is said to have a right to free speech, part of what is claimed is that her interest in speaking out freely is sufficiently important in itself from a moral point of view to justify holding other people, particularly the government, to have duties not to place her under any restrictions or penalties in this regard (Waldron, 1989, p. 504).

It is fundamental to note the importance of negative duties at this point. Negative duties are those with corresponding rights owned by others. Better still, negative duties are those with related rights to ask that we satisfy these duties (Bellotti, 2011, p. 158). Now, let us consider the *negative* duty of the government not to frustrate the realization of claimed rights by proxy (i.e. indirectly by a third party) as could be shown in the case of the right to education. First, let us speak of the right to education as a core right that grounds other derivative rights such as the right to be granted admission into a university if (*on the condition that*) one meets the requirements set for admission of candidates. Now, whose duty is it to satisfy this right to education if a student, 'A', fulfils all the requirements to be admitted into the university?

We can suggest a number of duty-bearers, top on the list will certainly include such corporate duty-bearers as the university where this student applied for admission and the government exercises a supervisory responsibility (duty) over the standards of the educational institution. As such, the right of A (student) to education entails the responsibilities of several duty-bearers, top on the list of which is B (the university) and C (the government). Another factor to be placed on the table is the rights of duty-bearers (B and C) and also to exercise their duties as derivable from their right to exist as institutions. On the one hand, is the *cultural* interests (being educated) claimed by the student 'A' and on the other hand, is the *economic* interest claimed by duty-bearer 'B' (university) and *political* interest claimed by duty-bearer 'C' (government). Understanding rights as interest-laden claims, it is easy to underscore the conflicts of rights which can be envisaged by a conflict of cultural, economic, and political interests in the above scenario.

On the basis of those preliminary features of the above thought experiment, let us consider the specific instance of a student 'A' whose derivative right to gain admission for education is not satisfactory met by the duty-bearers 'B' and 'C' (university and government's ministry of education) after having fulfilled the requisite standard conditions stipulated on the official channels by the university.

Let us also assume that there are real constraints on the part of the university, for instance, on the one hand, *economically* the university will spend more in hiring lecturers beyond the threshold capacity of the student population (say, 600 students) and on the other hand,

politically the Government Ministry of Education has mandated all university, not to admit more than a certain number of students (say, 500 students) but for whatsoever conceivable reason, out of about 800 applicants, 640 applicants met the set requirements for gaining admission (i.e. more than feasible admissible student population fulfilled the conditions warranting the 'claimability' of the right to education from duty-bearers on account of the *culturally-relevant interest* of applicants).

Certainly, not all qualified 640 applicants can be admitted and so 140 qualified candidates will be denied their rights to education *ceteribus paribus*, hence we establish a conflict of duties but it is not easy to apportion the whole responsibility of failing to meet the rights of 140 'casualties' on the university given that part of its constraints was the government policy (otherwise, the casualties could have been reduced to 40). As already indicated the sources of this conflict are the *economic* and *political* constraints which are themselves claimable interests of a profit-making facility (university) and a policy-making body (government).

At this point, it is pertinent to resolve the above conflicts of duties (on the part of the university) arising from conflictual rights (interests: cultural, economic, and political). Howsoever these constraints are explained, the bottom line is that the university will fail to meet its duties to all right claimants to the admission services she offers, and if duties are said to be grounded on rights, then the claimants to these rights deserve compensation from the university for failure to satisfy their claimable rights in much the same way all breach of rights (including proprietary rights) attract legal compensation/redress mediated by competent juridical bodies.

Now, if the 140 students were denied admission despite that they fulfilled the conditions based upon which their rights to education can be claimed, collectively sues only the university for breach of duty (without joining the government in the suit), and after a long legal battle, they win the case for compensation against the university, then how can the legal representative of the university argue for the adequate compensations owed by the university to the 140 casualties, given that the university's internal constraint is responsible for only 40 casualties, whereas the governments external constraint is responsible for the other 100 casualties? Assuming that conditions to be qualified for admission are set, the objection that perhaps a right to admission is different from a right to be considered for admission still does not supply the justification for the admission of the 500 hundred students who also met the same conditions as the 140 students who were denied admissions. There is no justifiable reason why all those who had crossed the same threshold of requisite standards will not be granted the same right to claim the interests accrued to them by their status as having fulfilled the conditions based upon which they can claim the same rights all other factors remaining *ceteribus paribus*.

The alternative of a fluid or arbitrary adjustment of the justifications for gaining admission based on non-normativity of considerations rather than normativity of requisite conditions to be met for admission implicates an arbitrary criterion for gaining admission and as such does not serve as a rational justification for admitting some qualified students while refusing to admit some other equally qualified students. At best, it is tantamount to having no standard criterion for admission but rather a whimsical decision of the university authorities to admit

whomsoever they wish to irrespective of whichever criteria is operative. Only a fixed set of criteria can serve as a standard for the effective gaining of admissions. within this set of criteria the stage of considerations (which reveals constraints on the part of a duty-bearer, i.e. the university), does not 'disqualify' someone who meets the requisite fixed set criteria for admission, and this standardization of admission granting if met by all candidates of claimable right which is binding on duty-bearers or put more simply. It is the criteria that determine the results of considerations rather than the other way round.

It is obvious that in order to resolve this aporia, a reference back to the logic of grounding duties on rights is circular and unproductive. However, the legal representative of the university can count on at least two systems of calculating compensations arising from failures to meet one's duties – namely *pro-rata* and *pro tanto*. If the Jury decides on *pro-rata* calculation of compensation, there is a different result for the university than if the Jury decides on *pro tanto*.

Let us see how this claim of different consequences is demonstrated: first, we assume that the total value of the compensation is One Million Dollars. Next, we ascertain the actual percentage of responsibility for failures of duty-bearers shared by the university and the government. For the university, we have $40/140 \times 100 = 28\%$, whereas, for the government, we have a surplus of $100/140 \times 100 = 72\%$. Therefore, A *pro tanto* judgement of the jury will cost the university a total of one million dollars whereas a *pro-rata* judgement of the jury will cost the university only 28% of one million dollars (280,000 dollars). The duty to protect entails that individuals are limited from involving in others' rights. The articulation of this positive duty needs the government to give legal framework assistance which controls private organisation (Dafel, 2013, p. 598). This duty needs the implementation of laws that limit persons from hindering another's benefit of a right.

Raz's "Interest-criterion" of Rights versus Logic of Dependency of Duties

The two terms namely rights and duties are accountable to every man (Jansen, 2004, p. 446). Rights are subjective in nature and not collective. Human rights define the relationship existing between concrete and fictive persons on a normative ground because all are rights (Kirchschlaeger, 2014, p. 310). In the light of Raz's arguments, a person may be said to have a right if and only if some aspect of her well-being (some interests of hers) are sufficiently important in itself to justify holding some other person or persons to be under a duty (Raz, 1986, p.166). The demonstration of the conclusive logicity of the notion of rights as 'grounds of duty' in the preceding section, is for the most part intuitively uncomfortable for duty-bearers, given that as indicated duty-bearers are not 'without rights' some of which may come into conflict with the rights of 'interest-claimers' whose rights oblige duty-bearers. Such a complex nature of rights and duties is already highlighted in the example given above with universities 'economic' rights as a profit-making organization like every other business enterprise.

Perhaps another example of conflictual duties arising equally from conflictual rights can help to clarify our claim for the non-necessity of the notion of rights as 'grounds of duties'. A person, 'A' is said to have a right to expression, and so claims as his or her interest, the satisfaction of the need to speak freely to anybody and at anywhere. From the moral point of

view, those around 'A' particularly the government have the duty not to place any sanction on him or her. On this conception, basing duties on rights is quite a different matter from basing them on general utility. For a utilitarian, the government's duty to let someone speak out is never inferred merely from the importance of the interest that the individual person herself has in the matter; rather it is inferred from a calculus that relates the importance of that interest to the importance of every other interest that may be affected by the imposition of the duty (Waldron, p. 504).

Rights and duties are correlated in many ways. Often it is said that having rights brings in responsibilities and duties. These correlations are not linear and so the logic of dependency is a multi-value logic and can have a multi-directional impact on legal as well as moral rights conflicts. Consider the conception of rights put forward by Robert Nozick, according to which, rights are to be thought of as side constraints-limits on the actions that are morally available to any agent (1974, Pp. 28-29). In this perspective, rights define boundaries and as such necessarily impose duties not as satisfying interests claimed by right-holders but rather as non-interference in the claims of right-holders to pursue their interests. In other words, right-holders are the duty-bearers of realizing their claimed-interests rather than holding others responsible for satisfying their interest-claims. Nonetheless, it is trivial to conclude *pro-modo* [at this stage] that having rights always entail a clear implication of specific corresponding duties. Rights can be claimed without at the same time holding others responsible for corresponding duties. Hence, the interest criteria of rights do not tally with the logic of dependency of duties on claimed rights.

Human rights are equally shared among people and it entails a corresponding duty. Rights are enforced alongside corresponding duties and for efficient realization of corresponding duties. Human rights by implication are individual in nature does not mean individual rights-holder. There are two types of obligation arising from rights claims. One of the obligations is that our duties must satisfy the rights of others. The second is that others do not possess rights that command us to fulfil their duties (Bellotti, p.581).

A right is considered as most powerful kind of moral claim. It points to the fact that the topmost duty constitutes a primary position upon us. Let us discuss two kinds of duties here: negative and positive duties. On the one hand, negative duties are those duties with corresponding rights. Conversely, positive duties are those duties without corresponding rights. Corresponding in relation to rights plays a pivotal role to prevent harm. In the opposite direction, they do not possess the right in cooperating with the duty of proving help. Consequently, the explanation offers negative duties possess a powerful moral stand upon us even in those cases in which the right-holder has to make little effort to act in accordance with these duties. Since going against the former trespasses the rights of others while contravening the latter do not.

Conclusion

In spite of the above presentation of the inconclusiveness of the notion of rights as interest-laden claims, the conflictual features between rights and duties, do not lay themselves open to a one-size-fits-all jacket solution. Each specific set of rights-duty context implicates a co-dependency relation since duty bearers are not themselves 'without rights' and right-holders

are not themselves equally 'without duties.' The consideration of the nature of rights and the correlative nature of duties cannot be made to hang on to an *apriori* assumption of the logic of dependency. Rights certainly entail duties but the grounds of duties need not follow from the interest-claims which are only aspect or perspective features of claimed rights since interests may change but the rights claimed due to the previous interest may still remain valid in spite of the new interests which the claimant also appropriates.

References

- Belliotti, R. A. (2011). "Negative Duties, Positive Duties, and Rights" *Florida International University*. Pp. 581-588.
- Dafel, M. (2013). "The Negative Obligation of the Housing Right: An Analysis of the Duties to Respect and Protect". *South African Journal on Human Rights*, vol. 29 (3), Pp. 591-614.
- Elechi, M. (2019). "Justice and the Politico-Economic Development of Nigeria: A Philosophical Analysis" in *African Research Review: International Multi-Disciplinary Journal*, vol. 13(3), Pp. 181-191.
- Jansen, N. (2004). "Duties and Rights in Negligence: A Comparative and Historical Perspective on the European Law of Extracontractual Liability", *Oxford Journal of Legal Studies*, vol. 24 (3), Pp. 443-446.
- Kirchschlaeger, P. (2014). "Human Rights and Corresponding Duties and Duty Bearers" *International Journal of Human Rights and Constitutional Studies*, 2. 4, (2014): Pp. 309-321.
- Njoku, F. (2002). *Essays in African Philosophy, Thought and Theology*, Owerri: Claretian Institute of Philosophy.
- Nieswandt, K. (2022). "What is Conventionalism about Moral Rights and Duties?" *Australian Journal of Philosophy*: <http://www.tandfonline.com/loi/rajp20>, Pp. 1-14.
- Nozick, R. (1974). *Anarchy, State and Utopia*. Oxford: Basil Blackwell.
- Raz, J. (1986). *The Morality of Freedom*. Oxford: Clarendon.
- Raz, J. (1984). "On the Nature of Rights" in *Mind*, vol. 93 (370), Pp.194-214.
- Steiner, H. (1994). *An Essay on Rights*. Oxford: Blackwell.
- Waldron, J. (1989). "Rights in Conflict," in *Ethics*, vol. 99(3) Pp. 503-519.