

Rights to Rights

by

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WHAT IS A RIGHT? What is X's right versus Y to the effect that S? Here X and Y are two 'parties'; we'll think of them as people, but they might instead be government bodies, universities, ... S is some state of affairs that may or may not obtain: perhaps some relation's holding between X and Y, perhaps X's or Y's having of some property, perhaps neither. I do not think we should say, once and for all, what X's right versus Y to the effect that S may be. It may be various things, or a bundle of more than one of these various things.

Stig and Helle Kanger [1] say that it consists of a bundle of one or more of four *simple* types of rights. These are defined in a language that combines deontic modalities with an operator of agency, 'sees to it that'. We have two dual deontic modalities, 'it shall be' and 'it may be' (that is, 'not: it shall be that not'). It is convenient to introduce another dual: 'not: sees to it that not' shall be abbreviated 'lets it be that'. (Warning: 'let it be', unlike 'see to it', is not meant to be factive. Even if you let it be that so-and-so, it may still not turn out that so-and-so, perhaps because someone else sees to it that not so-and-so). Here are the Kangers' four simple types.

X has versus Y a *K-claim* to the effect that S

=df It shall be that Y sees to it that S

X has versus Y a *K-immunity* to the effect that S

=df It shall be that not: Y sees to it that not-S

= It shall be that Y lets it be that S

X has versus Y a *K-power* to the effect that S

=df Not: it shall be that not: X sees to it that S

= It may be that X sees to it that S.

X has versus Y a *K-freedom* to the effect that S

=df Not: it shall be that X sees to it that not-S

= It may be that X lets it be that S

X's right versus Y to the effect that S may contain any one or more of these. Since the bundle of all four is consistent, so is any lesser bundle. But since 'see to it' is factive, 'sees to it' implies 'lets it be'; both deontic modalities are closed under implication; so a claim implies an immunity and a power implies a freedom; so some bundles are redundant. Pruning these, we have eight non-equivalent bundles.

I would like to amend the Kangers' definitions slightly by putting 'X has an obligation to do so-and-so' in place of 'it shall be that X does so-and-so', and 'X has a permission to do so-and-so' in place of 'it may be that X does so-and-so'. (Obligation and permission are again duals.) To mark my amendment, I drop the prefix 'K'.

X has versus Y a *claim* to the effect that S
 =df Y has an obligation to see to it that S

X has versus Y an *immunity* to the effect that S
 =df Y has an obligation to let it be that S

X has versus Y a *power* to the effect that S
 =df X has a permission to see to it that S

X has versus Y a *freedom* to the effect that S
 =df X has a permission to let it be that S

The Kangers are noncommittal about what they mean by 'it shall be' and 'it may be', so perhaps what they say can be taken in such a way that my amendment is no change at all – if so, no harm done. But what they say might instead be taken in such a way that 'it shall be' and 'it may be' are operators of impersonal deontic necessity and deontic possibility; and these are interpreted in the usual way as signifying truth in all or in some ideal worlds; and an ideal world is one in which all obligations are fulfilled (or equivalently, nothing unpermitted is done). In that case, I have two things to say on behalf of my amendment.

First, it seems much more likely that previous chapters in systematic ethics, or in jurisprudence, will deliver the concept of a personal obligation or permission than that they will deliver the concept of deontic necessity or possibility directly. Given the personal obligations or permissions, we can in turn define an ideal world, as we have seen. And thence we can go on, as we have seen, to define impersonal deontic necessity and pos-

sibility. *Ceteris paribus* it seems better, when we can, to use concepts that come earlier rather than later in the chain of definitions.

Second, and more important, *ceteris* are not *paribus*. Deontic necessity that X does so-and-so does not imply that X has an obligation to do so-and-so. Deontic possibility that X does so-and-so does not imply that X has a permission to do so-and-so. It can matter which we write into our definitions of the simple types of rights; and when we see how the differences arise, I think we will see that personal obligations and permissions are the better choice.

We have ways to impose obligations on others; and we have ways to grant permissions to others, in other words to remove some of their obligations. (For further discussion, see [2].) Suppose that W has an unfulfilled obligation to see to it that X has an obligation to do so-and-so. In any ideal world, no obligation goes unfulfilled; so W fulfills his obligation to impose an obligation on X, and X in turn fulfills his newly-imposed obligation to do so-and-so. Therefore it is deontically necessary that X does so-and-so. But our actual world is not ideal, W does not fulfill his obligation, so no obligation is imposed on X, so X has no obligation to do so-and-so. (Unless, of course, he gets that obligation from some other source.) Or suppose that V has an unfulfilled obligation to see to it that W has an obligation to see to it that X has an obligation to do so-and-so; or suppose that U ... The same thing happens: it is deontically necessary, but perhaps not obligatory, for X to do so-and-so.

Likewise for permission. Suppose that W has an unexercised permission to see to it that X has a permission to do so-and-so; or suppose that V has an unexercised permission to see to it that W has a permission to see to it that X has a permission to do so-and-so; or suppose that U ... In some ideal world, where nothing unpermitted is done, the appropriate permissions are all exercised, and so X does so-and-so. Therefore it is deontically possible that X does so-and-so. Yet in actuality, thanks to the unexercised permissions, X does not have permission to do so-and-so. (Unless, of course, he gets it from some other source.)

It is not necessary that the parties in these scenarios, ..., U, V, W, X, be all different. They could even be all the same. You can see to it that you have a certain obligation, say by taking a suitable oath. You can see to it that you have a certain permission, say by begging it from someone who is in a position to grant it, and who is willing to do so. Elsewhere [3] I considered the special case of someone who had an unfulfilled obliga-

tion to impose a certain obligation on himself, but who, because the first obligation went unfulfilled, did not have the second obligation. (I thank Ernest Loevinsohn for noting that deontic necessity differed from obligation in that case.)

(Someone might wish to add a further amendment. Wherever I spoke of having a permission, speak instead of having a permission *and an ability*. I think that would be a bad idea. Having a right is one thing, being able to exercise it is another, and we'd do best to keep them unentangled.)

Now, once we bear in mind that we can alter one another's obligations and permissions, it seems that there may be more members of a bundle of rights than we have yet taken account of. It is a merit of the Kangers' approach (as amended) that we can define these without any extension of our language. We have eight *compound* types of rights: rights to rights:

X has versus Y a claim to the effect that he shall have a power to the effect that S
 = Y has an obligation to see to it that X has a permission to see to it that S

X has versus Y a claim to the effect that he shall have a freedom to the effect that S
 = Y has an obligation to see to it that X has a permission to let it be that S

X has versus Y an immunity to the effect that he shall have a power to the effect that S
 = Y has an obligation to let it be that X has a permission to see to it that S

X has versus Y an immunity to the effect that he shall have a freedom to the effect that S
 = Y has an obligation to let it be that X has a permission to let it be that S

X has versus Y a power to the effect that he shall have a claim to the effect that S
 = X has a permission to see to it that Y has an obligation to see to it that S

X has versus Y a power to the effect that he shall have an immunity to the effect that S

= X has a permission to see to it that Y has an obligation to let it be that S

X has versus Y a freedom to the effect that he shall have a claim to the effect that S

= X has a permission to let it be that Y has an obligation to see to it that S

X has versus Y a freedom to the effect that he shall have an immunity to the effect that S

= X has a permission to let it be that Y has an obligation to let it be that S

I submit that these eight compound types of rights, no less than the four simple types we listed before, can very plausibly be considered members of X's bundle of rights versus Y to the effect that S.

The ardent combinatorialist will complain that our job is only half done. Why not another eight compound rights? Why not:

X's claim to the effect that he shall have a claim?

X's claim to the effect that he shall have an immunity?

X's immunity to the effect that he shall have a claim?

X's immunity to the effect that he shall have an immunity?

X's power to the effect that he shall have a power?

X's power to the effect that he shall have a freedom?

X's freedom to the effect that he shall have a power?

X's freedom to the effect that he shall have a freedom?

I spare you the analyses of the second eight. Suffice it to note that each one of them involves someone's altering his own obligations and permissions, whereas each one in the first eight involved someone's altering someone else's obligations and permissions. But is that a problem? We noted already that seeing to it that one has an obligation or a permission was perfectly possible.

I therefore do not deny that the second eight are possible situations. But I doubt very much that the situations in the second eight can at all plausibly be considered members of X's bundle of rights versus Y to the effect that S. I suppose the reason why it strikes me that there is a big difference between the first eight and the second is that altering one's own obligations is just a bit harder and less straightforward than altering someone else's.

A hierarchy beckons, but I think we would be wise not to ascend it. On the first rung, we have the four simple rights. On the second rung, we have the 16 compound rights to rights. On the third rung we have 64 compound rights to rights to rights. On the fourth ... All the situations on all the rungs are possible. Those on the lowish rungs are even possible in the world as we know it. Many of them are like the compound rights in our second eight: they involve altering one's own obligations and permissions. But all the way up the hierarchy there will be some that only involve altering someone else's obligations and permissions. Should these, at least, be admitted as members of bundles of rights? – I very much doubt it. Unlike our first eight rights to rights, they are too complicated, too far removed from any familiar thought about rights. To classify them as members of bundles of rights seems seriously artificial.

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References

- [1] KANGER, S., and KANGER, H. "Rights and Parliamentarianism." *Theoria*, vol 32 (1966), pp. 85–116. Reprinted, with changes, in R. E. OLSON and A. M. PAUL, eds., *Contemporary Philosophy in Scandinavia*. Baltimore: The Johns Hopkins Press, 1972.
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- [3] LEWIS, D. "The trap's dilemma." In D. LEWIS, *Papers in Ethics and Social Philosophy*. Cambridge: Cambridge University Press, 2000.