

The Difference Between a “Right” and a “Liberty”

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The Difference Between a “Right” and a “Liberty” and the Significance of This Difference in Debates over Public Policy on Abortion and Euthanasia

There is a great deal of talk in our society today about “rights.” Frequently, people talk about rights as a two-term relationship between *a person (or persons) and a thing or an action*. Thus pro-life people affirm the right of the unborn to life, whereas NOW and Planned Parenthood claim the right of women to have an abortion, workers their right to a just wage, smokers their right to smoke, some infertile couples their right to have a child, etc.

Here I first summarize the distinctions made by John Finnis (taking the lead suggested earlier by W. N. Hohfeld) between a “‘claim’ right” or a “right in the ‘strict sense’” and a “‘liberty’ right” or “liberty” and show the moral relevance of these distinctions and how they clarify “rights talk” in debates over abortion and euthanasia. I will then offer a moral analysis of the various claims made in these debates. I conclude by considering public policy and the question of the common good with regard to abortion and euthanasia.

Finnis on the Difference Between a “‘Claim’ Right” or “Right in the ‘Strict Sense’” and a “‘Liberty’” or “Liberty Right”

Finnis begins his analysis by calling attention to the discussion of rights provided by W. N. Hohfeld in the latter’s *Fundamental Legal Conceptions*. New Haven, CT: Yale University Press, 1919. According to Hohfeld: (i) all assertions or ascriptions of rights can be reduced without remainder to ascriptions of one or some combination of the following four ‘Hohfeldian rights’: (a) ‘claim-right’ (called by Hohfeld ‘right stricto sensu’), (b) ‘liberty’ (called by Hohfeld ‘privilege’), (c) ‘power’, and (d) ‘immunity’; and (ii) that to assert a Hohfeldian right is to assert a three-term relation between one person, one act-description, and one other person (John Finnis, *Natural Law and Natural Rights*. New York/Oxford: Clarendon Press, 1980, p. 199.)

I will not consider Hohfeld’s “powers” and “immunities,” insofar as they are not relevant to our concern, but focus attention on “claim-rights” (“*rights stricto sensu*”) and “liberties.” If A and B signify persons and “x” stands for an act description signifying some act, then, as Finnis points out, the following logical relations among A, B, and “x” will obtain: (1) A has a claim-right that B should “x”, if and only if B has a duty to A to “x”. (2) B has a liberty (relative to A) to “x”, if and only if A has no-claim-right (‘a no-right’) that B should not “x”. (2’) B has a liberty (relative to A) not to “x”, if and only if A has no-claim-right (‘a no right’) that B should “x” (ibid.).

One can see, in light of these three-term relations, that the most important of the aids to clear thinking provided by Hohfeld’s schema is the distinction between A’s



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claim-right (which has as its correlative B's duty) and A's liberty (which is A's freedom from duty and thus has as its correlative the absence or negation of the claim-right that B would otherwise have). A claim-right is always either, positively a right to be given something (or assisted in a certain way) by someone else, or, negatively, a right not to be interfered with or dealt with or treated in a certain way, by someone else. When the subject-matter of one's claim of right is one's own act(s), forbearance(s), or omission(s), that claim cannot be to a claim-right, but can only be to a liberty (ibid, p. 200).

It is most important to recognize that the third element in the three-term relationship between persons or groups of persons (A and B above) is a specific kind of action, "x", and that when *rights* are at stake the action in question is an act on the part of *others*, and *not* on the part of the person or persons who have the right, whereas when liberties are at stake the action is an act on the part of the person or persons claiming the liberty. This enables us to clarify "rights" talk and to distinguish between a "right" and a "liberty" and to determine, on the basis of a moral analysis, whether the "right" or "liberty" claimed is authentic. To illustrate, the claim that smokers have a *right* to smoke turns out to be a claim to the *liberty* of smokers to smoke because the act in question "x", namely smoking, is an act on their part, not on the part of others. And while they may have the liberty to smoke under certain conditions, their liberty to do so is restricted by the rights of others and their duty to forbear smoking should their choice to do so violate the rights of others. But when workers claim a "right" to a just wage, we can see that this claim, if expressed in a three-term relationship between workers (A), their employers (B), and a specific act "x", is a "claim" right or right in the "strict sense," because the act in question "x", namely, payment of a just wage, is an act on the part of their employers, not on the part of the wage earners, and such payment is indeed morally required.

It is crucially important to recognize that rights in a strict sense are inviolable only if their violation is prohibited by absolute moral norms, i.e., norms admitting of *no exceptions*. Thus women (A) have a right in the strict sense not to be raped "x" if and only if *all men* (B) have an absolute duty not to rape them.

The relevance of these distinctions to debates over abortion and euthanasia

1. Abortion

NOW and Planned Parenthood claim that women have a "right" to an abortion. If we analyze this alleged right in light of the three-term relationship between persons (A and B) and a specific kind of action "x", we immediately see that the "right" claimed is not a right in the strict sense but an alleged "liberty," for the claim is that women (A) have the liberty relative to their unborn children (B) to abort them "x". It is an alleged liberty and not a right because the action in question "x", namely, to abort, is not an action on the part of others (B) but rather on the part of those (A) claiming the "right/liberty." Thus this claim can be articulated as follows: "Women (A) have the liberty to abort "x" their unborn children (B), if and only if their unborn children (B) do not have the right that their mothers (A) not abort "x" them." The claim that unborn children have a "right" to life, we can see, is indeed a "claim' right" or a "right in the strict sense," insofar as the action in question "x" is an action not the part of the unborn children but on the part of their mothers, and the three-term relationship can be expressed as follows: "Unborn children (A) have the right relative to their mothers (B) not to abort them "x", if, and only if, their mothers (B) have a duty not to abort them "x"."



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This is not the place to set forth the argument that unborn human children are indeed innocent persons with an inviolable right to life and that all other persons, including their mothers, have the strict duty to forbear intentionally killing them (on this see, e.g., Robert George and Christopher Tollefsen, *Embryo: A Defense of Human Life*). From which it follows that women’s alleged liberty to abort their unborn children is spurious.

2. *Euthanasia*

What about “rights” talk in debates over euthanasia or mercy killing? Here I limit consideration to debates over “voluntary euthanasia,” i.e., mercy killing engaged in only after the person who is to be killed mercifully freely consents to being so killed.

Advocates of voluntary euthanasia claim that a person has a “right to die.” The right claimed here is indeed a “‘claim’ right” or a “right in the strict sense” because those claiming the right are claiming the right *to be killed mercifully*, and this is an act “x” on the part of *other persons* and *not* on the part of those claiming the right. The claim can be expressed as follows: “A (those persons seeking to die mercifully) have the right that B (other persons) kill them “x” for reasons of mercy, if and only if B (other persons) have a duty to kill them for reasons of mercy.” However B (i.e., other persons) cannot have a duty to kill A (i.e., persons seeking to die mercifully) precisely because they have the duty *to forbear intentionally killing innocent persons whose lives are protected by the law against homicide*. I cannot here develop the arguments to show that this is true, but the literature on this matter is abundant (see, for example, John Keown, *Euthanasia, Ethics, and Public Policy: An Argument Against Legalization*, 2004). Thus the alleged “right” in question is a spurious and not authentic right.

Public Policy and Abortion/Euthanasia: Legislation and the Common Good

I cannot here enter into a lengthy discussion of the common good, but it is reasonable to hold that this concept embraces the protection of inviolable human rights, correlative to which, as we have seen, are absolute moral requirements. Civil law cannot proscribe all human vices; if it attempted to do so human liberty or freedom, itself a good of human persons and a component of the common good, would unduly suffer. Civil law cannot compel me not to hate my neighbor or not lie to my wife about putting out the trash. But it can compel me to forbear acting on my hatred or from falsely testifying against my wife in court. Its function, in part at least, is to prohibit with appropriate sanctions those human choices and actions that bring grave harm to others, violating their “inviolable” rights. Without prohibiting such actions civil law cannot succeed in its principal purpose: to make it possible for human society to be preserved. It is thus the function of civil law to prohibit such crimes as homicide, theft, and the like.

Here I will not take up the question of abortion and public policy or the common good in order to focus on public policy regarding voluntary euthanasia. At present in our society anyone who intentionally kills an innocent human person fortunate enough to survive pregnancy is guilty of homicide; and the lives of all innocent persons who have survived pregnancy are legally protected from lethal attacks intentionally directed against them, however benevolently motivated. It is not too difficult to realize that legalizing voluntary euthanasia will inevitably work to the serious disadvantage of many persons who do not want to be killed. Once it is legally permissible for a person to consent to being killed and for others to help



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achieve this choice, some, perhaps many, who do not want to be killed will be under heavy pressure to give their consent to this “beneficent” option. There will doubtless be some relatives, health-care personnel, social workers, and others who will urge the dying to consent to this beneficent and kindly treatment. The legalization of voluntary euthanasia would surely further erode the bonds holding the human community together—bonds already seriously eroded by public policy granting women the abortion liberty and denying to the unborn the protection their lives deserve. As Arthur Dyck has reminded us, human agents such as ourselves exist only because of the cooperative behavior of others. Human agents, including women who seek abortion and individuals who want to be killed for reasons of mercy, come to be only because others have given them life, and they continue to be only because others have nurtured and sustained them, have preserved their lives and refrained from harming and killing them. Dyck points out that there are certain “natural proclivities” (St. Thomas Aquinas called them “natural inclinations”) essential to the continuation of human life and of human communities: some make life possible to begin with—the proclivities to procreate and nurture; to protect and enhance life for persons both as individuals and as members of a community, etc. And there are certain natural “inhibitions”: those against killing, against taking away or failing to provide life’s necessities. These natural proclivities and inhibitions make individual and communal life possible. Indeed our natural rights, Dyck says, are “actual either as expectations or claims on the relations that are moral requisites of our individual and communal life.” Killing is wrong when it is wrong for several reasons. First, “the act of killing oneself or someone else violates and threatens to undermine the mutual responsibilities that are requisites of individual and communal life.” Second, killing is wrong when it is wrong because killing “no longer shows a love for life,” a good that we rightly prize and do not price. Finally, killing is wrong when it is wrong because the human life killed “is treated as a life that has little or no worth rather than as a life of incalculable worth” (see Arthur Dyck, *When Killing Is Wrong: Physician-assisted suicide and the courts*. Cleveland: Pilgrim Press, 2001, pp. 91-103).



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