

THE CONCEPT OF RIGHT AS THE PROPER ADJUDICATION OF CONFLICTING  
CLAIMS

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John Rawls makes a provocative, original, but largely underdeveloped and neglected suggestion about the most basic subject-matter and aims of normative ethical theory.<sup>1</sup> Scattered across his published writings, Rawls proposes that the moral concept of ‘right’, which we use when we call an individual action or social practice morally right or wrong, is defined by the functional role that concept has of *properly adjudicating conflicting claims that persons make on one another and on social practices*.<sup>2</sup> Substantive moral theories of right and wrong, including utilitarianism, Kantianism and contractualism, are supposed to provide more specific principles, criteria, values and ideals for interpreting and resolving this fundamental moral problem. By properly balancing competing claims, Rawls thinks that moral principles of right impose duties on individuals, such as duties of mutual-

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<sup>1</sup> In the vast literature on Rawls, I have not found anyone who has described or explored Rawls’ definition of the concept of right. There are some passing references to Rawls’ substantive conception of “rightness as fairness” in, for example, (Darwall 2006: 296-7, 303, 309; Freeman 2007: 182-3, 189; 2014; Nagel 1973; Ronzoni 2010; Taylor 2011: 21; Voorhoeve 2005). Some philosophers, such as (Parfit 2009: 346-355; Rachels 1998; Van Parijs 2003; Wenar 2003), as well as some ethics textbooks, such as (Singer 1993: 11-12, 18, 79), have described or engaged to some extent with the basic idea behind that conception, without exploring in much detail the suggestions Rawls gives for how it might be developed.

<sup>2</sup> TJ 113, 115, 167, 249, 393, 416-17, 472, 490; TKMP 520; LHMP 52-3. Rawls’ works will be abbreviated as follows: TJ – *A Theory of Justice (Revised edition)*; PL – *Political Liberalism*; R – *Justice as Fairness: A Restatement*; LP – *The Law of Peoples*; LHMP – *Lectures on the History of Moral Philosophy*; O – “Outline of a Decision Procedure for Ethics;” JAF – “Justice as Fairness;” JAR – “Justice as Reciprocity;” KCE – “A Kantian Conception of Equality;” IMT – “The Independence of Moral Theory;” KC – “Kantian Constructivism in Moral Theory;” PNM – “Justice as Fairness: Political not Metaphysical;” DPOC – “The Domain of the Political and Overlapping Consensus;” TKMP – “Themes in Kant’s Moral Philosophy;” and IPRR – “The Idea of Public Reason Revisited.”

aid or respect, and place requirements on the arrangements of social practices, such as standards of justice.

It is not immediately apparent, however, what moral problem Rawls thinks substantive theories of right are supposed to interpret and address. In particular, what is meant by a 'claim', what is it to 'make a claim', what does it take for claims to 'conflict' with one another, what is it to 'adjudicate' among conflicting claims and to do so 'properly', how could these adjudications translate into moral duties and standards and what kinds of conflicts are involved when such principles apply?

The aim of this paper is to offer a fuller account of what Rawls could have meant by defining the concept of right as the proper adjudication of conflicting claims that persons make on one another or on social practices. I do not contend that the expanded definition I propose is independently correct as a definition of right or that Rawls himself held it; instead, my more specific aim is to develop a plausible version of Rawls' characterization of the domain of right and wrong that is consistent with core aspects of his view and that avoids certain objections that may seem fatal to it. Those who are interested in interpreting Rawls' moral and political thought may find that my interpretation allows for a deeper understanding of the basic problems that Rawls believed theories of right and justice are meant to address as well as of the substantive solutions that he proposed. Moral and political philosophers more generally, including those who are skeptical of Rawls' contractualist framework, may also find that a distinctive account of the domain of right and wrong along the lines Rawls suggests may prove instructive as they work

to interpret the relationship between ‘the right’ and ‘the good’, explain moral motivation and structure their own substantive moral and political theories.

My plan is as follows: In the first section, I explain Rawls’ distinction between moral concepts and moral conceptions. I then turn in the next three sections to develop a version of Rawls’ definition of the concept of right as the proper adjudication of conflicting claims that persons make on one another or on social practices. I next describe three implications of the expanded definition of right I describe. Finally, although my aim is not to offer a full assessment of the merits of this definition of right, I end with two reasons why one might accept some version of it.

## **1. Moral concepts and moral conceptions**

Moral concepts, according to Rawls, are defined by the roles they have in resolving characteristic practical problems we face.<sup>3</sup> Moral conceptions, by contrast, are interpretations of moral concepts, they clarify the functions that moral concepts are supposed to serve as well as provide determinate principles, criteria and values for resolving those problems. Moral theory, according to Rawls, is the branch of moral philosophy concerned with the formation, elaboration and study of substantive moral conceptions as well as of the relations they bear to our psychology.<sup>4</sup>

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<sup>3</sup> TJ 9, 95-6; PL 11n; IMT 266.

<sup>4</sup> IMT 41, 286-7, 294; KC 341; TJ 508; R 41.

Moral theory, as Rawls understands it, begins with a suitably general but sufficiently vague moral concept that is defined by its functional role of addressing a practical problem. This problem provides a unified subject-matter that competing moral conceptions can interpret and resolve in different ways. One such problem is that of what we *ought* or *ought not* to do. The notions of right and wrong are sometimes understood in this broad sense of ‘correct’ or ‘fully warranted’<sup>5</sup>, but moral philosophers have also defined narrower domains of right and wrong, which are not always regarded as the whole of morality or of what we ought or ought not to do. In chapter five of *Utilitarianism*, for example, John Stuart Mill famously draws a conceptual connection between right and liability to punishment: “We do not call anything wrong, unless we mean to imply that a person ought to be punished in some way or other for doing it...I think there is no doubt that this distinction [between deserving and not deserving punishment] lies at the bottom of the notions of right and wrong.”<sup>6</sup> According to Kant, the concept of right (*Recht*) concerns external acts that can be coercively enforced, while ethics concerns maxims, ends and ideals, which cannot be coerced.<sup>7</sup> And, more recently, Thomas Scanlon claims that the “morality of right and wrong” is the morality of “what we owe to each other,” which does not extend to how, for example, we ought to treat non-human animals or the environment.<sup>8</sup> Although these definitions are somewhat obscure and may not capture what we ordinarily mean by the words “right” and “wrong”, they

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<sup>5</sup> (Bentham et al. 1996: 13, 16; Moore and Baldwin 1993: 70; Ross and Stratton-Lake 2002: 3; Sidgwick 1981: 32-33).

<sup>6</sup> (Mill and Crisp 1998: 222).

<sup>7</sup> (Kant and Gregor 1996: 6:230, 232).

<sup>8</sup> (Scanlon 1998: 4-5).

each may define a sufficiently clear moral question that can be clarified and answered by consequentialist, Kantian, contractualist or other substantive conceptions of right and wrong.<sup>9</sup>

Rawls proposes his own distinctive definition of right as the proper adjudication of conflicting claims that persons make on their social practices and on one another.<sup>10</sup> According to him, certain other moral concepts, such as justice, mutual-aid, mutual-respect and fidelity, fall under the concept of right because they are defined as the proper adjudication of specific types of conflicting claims. Rawls focuses mostly on the concept of justice, but he also suggests that his substantive conception of justice framework could be extended to a nearly complete conception of 'rightness as fairness' that would properly adjudicate almost all kinds of conflicting claims that persons could make on one another and on social practices generally.<sup>11</sup>

## 2. Making a claim

We can begin to elaborate on and expand Rawls' definition of right by examining what a person is, what it means for a person to make a claim, and what the objects of those claims must be in order for them to figure in conflicts that are properly adjudicated by principles of right.

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<sup>9</sup> TJ 95.

<sup>10</sup> See footnote 2.

<sup>11</sup> TJ 6-7, 15, 46, 94-5, 161-2, 164, 167, 225, 419, 422-5, 448-9, 452; R xvii, 186-7; PL xlii, 260-1; KC 311; PNM 389-90. Rawls expresses skepticism that rightness as fairness could account for our duties regarding animals and the natural environment (TJ 448-9; DPOC 488-9). Rawls later abandoned this comprehensive moral project to take up further issues of political justice. For explanations of his "political turn" see PL xvi-xxxv; R 186-7; IPRR 615-5 as well as (Weithman 2010).

## A. The concept of a person

The concept of a person, according to Rawls, is the concept of a being that has various characteristic capacities, such as the capacity to persist through time, to be conscious and self-conscious, to have and share experiences, to form, revise and pursue aims, commitments, values, plans and relationships, and to develop and maintain a character and moral virtues.<sup>12</sup> Rawls' characterization of the concept of a person is not meant to provide necessary and sufficient conditions for personhood. He thinks, however, that nearly all human beings, including young children, as well as many corporate entities, such as teams and nations, count as persons because they apparently have all or most of the essential capacities of persons.<sup>13</sup>

## B. Making a claim

In order to explain what it is for a person to 'make a claim', we must first consider the concept of an *interest*, which Rawls defines as any need, desire, liking, valuing, aim, aspiration, plan, commitment, attachment or loyalty that a person or non-person has.<sup>14</sup> Human beings, corporate firms as well as non-human animals can all have interests in this sense. Some interests are self-regarding, such as an animal's desire to avoid pain, a child's need for food, or a person's commitment to fulfill religious obligations she thinks she owes to herself. Other interests may not be self-regarding, such as a person's interests in the happiness of others, in

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<sup>12</sup> IMT 296-301.

<sup>13</sup> JAF 49; JAR 193-4; KC 356.

<sup>14</sup> O 13; KCE 256; KC 330; PL 19-20, 302

preventing the suffering of animals, in the promotion of certain intrinsic values she affirms, or in others living up to religious or moral principles she accepts.<sup>15</sup>

A person *makes a claim*, according to Rawls, just in case she *expresses an interest in the form of a demand*.<sup>16</sup> A person can make a claim on the basis of one of her own interests, which may or may not be self-regarding. For example: Someone who has a need to avoid significant bodily injury can make a claim on behalf of that interest by demanding that a lifeguard save her from duress. A person can also make a claim on the basis of an interest that is not her own. For instance: Someone who rejects euthanasia on religious grounds can nonetheless make a claim on behalf of her husband's interests by demanding that the hospital respect his wish to die. And, a person can make multiple claims for the same thing on behalf of different interests. Someone can press a claim for the humane treatment of animals on behalf of the interests those animals have in avoiding pain while also demanding the same treatment on behalf of her concern for them.

What, more specifically, does it mean to 'express an interest in the form of a demand'? Demands are kinds of imperatives, so the meaning of 'making a claim' includes an account of illocutionary force that may presupposes an accepted social convention in which uttering certain words or displaying certain signs counts as making a demand.<sup>17</sup> One could raise questions, which Rawls does not address, about the nature of those conventions, such as: Can there be standing claims that people are assumed to have made unless there is convincing evidence to the

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<sup>15</sup> TJ 110.

<sup>16</sup> O 13-14.

<sup>17</sup> TJ 356.

contrary? Must a person or social practice know what I am demanding of them and know that I am issuing a demand in order for me to succeed in making a claim on them? In order to make a claim on another person, must I also be willing to conform to the demand myself if I were in her position? And, must I intend to make a claim in order to succeed at doing so, or is it possible to make a claim accidentally by, for example, simply saying something that triggers certain conventional effects? Rawls may have assumed that some of these issues do not matter for developing substantive moral conceptions of right while others should be assessed from within those moral conceptions themselves.

Expressing demands is nonetheless different from expressing other kinds of grammatical imperatives. One contrast is between making a demand, in Rawls' sense, and giving advice. When we offer advice to someone, we take up her perspective and express our opinion about what we think is best for her in light of her interests.<sup>18</sup> If our advice is not accepted or acted upon, we need not be disposed to complain that she has not heeded our counsel. When we make a demand on someone, by contrast, we insist that she do what we ask of her, whether or not this is to her advantage, and we are disposed to object if she does not comply with our request.

A second contrast is between demanding, in Rawls' sense, and demanding 'as if by right,' in the sense that is close to what Stephen Darwall (2006), for example, assumes in his substantive moral theory. A person who makes a claim, according to Rawls, need not assume that she has the rightful authority to make the demand, nor

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<sup>18</sup> TJ 356-7.



must she think that her demand is morally valid or that any person or social practice is morally responsible for complying with or enforcing her demand. Someone who altogether lacks any moral capacities can still make claims on others, according to Rawls, even though such a person does not have the necessary moral concepts to judge that his demands are rightful, that he has the moral authority to make them or that others are morally blameworthy for not living up to them.<sup>19</sup> Persons with developed moral capacities can also make claims on the basis of their non-moral aims and aspirations without thinking that they have the moral standing to make those demands, that what they are demanding is guaranteed by right or that others are morally accountable for living up to them.

### 3. Making a claim on a person or social practice

The concept of right, according to Rawls, is only concerned with two kinds of claims that persons make. One type of claim exists when a person expresses a demand *on another person to act or not act in some way*, without regard to the underlying motives that may lead him to do so or not. Claims of this kind are not demands on the intentions, motives, beliefs, values or character of others; they are only demands on their external acts. According to Rawls, any claims that a person might make on himself, such as to avoid suicide, or any claims he might make on a non-person, such as to come when called, cannot figure in conflicts that are adjudicated by principles of right. A claim of this first type is satisfied when the other person complies with the demand for whatever reason.

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<sup>19</sup> PL 52.

The other type of claim that can figure in conflicts of right exists when a person demands that *a social practice be arranged or not arranged in a certain way*. A social practice, according to Rawls, is a public system of rules that defines offices and positions; assigns privileges, rewards, rights, duties, and responsibilities to these roles; and provides for penalties and defenses when the rules are violated.<sup>20</sup> A social practice exists when its rules are effectively and impartially administered and when those who are engaged in it generally know that one another generally understands, accepts and conforms to its rules.<sup>21</sup> Claims of this second type are satisfied when the relevant social practice is arranged or not arranged in the demanded way.

## 2. Conflicting claims

We can next ask: What are the conditions in which claims of these two types conflict with one another in a way that can be properly adjudicated by principles of right? Answering this question is more difficult than it may appear, in part because Rawls says very little about what he means by a 'conflict' of claims. One worry is that there is no way of understanding this idea in such a way that many of the principles we would ordinarily regard as principles of right, including some of the ones Rawls himself describes as such, actually count as principles of right under his definition.

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<sup>20</sup> O 20n; JAF 47-48, 47n; JAR 190n.

<sup>21</sup> TJ 48.

A few points about what Rawls means by 'conflicting claims' are clear enough. First, in order for a conflict of the requisite sort to exist, two or more claims must have actually been made. Any claims that a person might make or any interests he could potentially express cannot figure in such conflicts unless they have also been expressed as demands. Second, a separate person must have made each claim in a conflict that is properly adjudicated by principles of right.

As a first approximation, we can say that two or more claims conflict with one another just in case it is not possible for all of them to be completely satisfied. For example, one kind of conflict exists when two or more claims are logically inconsistent, such as if one person demands that someone else act in some way and another person demands that she not act in that way, or when their claims are nomologically inconsistent, such as when one person demands that someone attend a meeting in New York at noon and another person demands that she pick him up in London.

If this is all that is meant by a conflict of claims, however, then principles of right would not apply to a wide variety of cases that we and Rawls think they cover. If, for example, one person makes a claim on another person to refrain from injuring him, to save him from duress, or to show him proper respect then there must also be some conflicting claims on the other side in order for a dispute to exist that can be adjudicated by a principle of right. But it is not clear what these other claims could be such that it would not be possible to satisfy them along with the original claims. Rawls must think that conflicting claims of the relevant sort exist in such cases because he proposes substantive principles of right that forbid harming others and

that require giving mutual aid and showing proper respect. Yet if we cannot find what conflict these principles are supposed to adjudicate then, according to Rawls' own definition, his proposed principles of right may not be principles of right at all.

One way to illustrate the problem is to suppose, for example, that Steve is in great peril and that Sally could save him at some minor cost to herself. We can imagine that Steve has made a claim on Sally for assistance, that he is the only one who has done so and that there are no other claims on Sally that are at stake in the case. If we want to say that Sally could, as a conceptual matter, be under a duty of right to save Steve then there must be a conflict of claims for a principle of right to adjudicate, so we must add in one or more claims that stand in opposition to Steve's claim for help. What might such a claim or claims be?

It would be natural to respond that if Sally refuses or ignores Steve's pleas for help then the two of them are at odds with one another in a way that can be adjudicated by a principle of right. This suggestion does not establish a conflict of claims, however, because simply refusing to satisfy a claim is not itself to make a claim. What is needed for principles of right to apply in this case is some counterclaim by another person, whether one made by Sally or someone else, that stands in conflict with Steve's claim for assistance. Even if Sally's refusal to help counts as implicitly making a demand according to some recognized conventions, we still need to explain what it is that she is demanding and how her claim conflicts with Steve's.

One claim Sally might make is a claim on herself not to act in any ways that set back her interests. If it is impossible for her to help Steve without also

undermining her own interests then their claims would be in conflict. As we have seen, however, claims that a person makes on herself, according to Rawls, cannot figure in conflicts that are adjudicated by principles of right.

Another claim Sally might make is for Steve to conform to a principle she accepts, such as the principle that everyone should look out for his or her own interests. This claim on Steve could figure in conflicts that are properly adjudicated by principles of right. The problem, however, is that it seems possible for both of their claims to be satisfied, which would mean that their claims do not conflict with one another – Steve can conform to the principle that everyone look after his or her own interests while Sally also saves his life.

A fourth possibility is that Sally could make a second-order claim on Steve by demanding that he withdraw the claim he has made on her for help. There are at least two problems with this proposal. One is that it is not clear what interest Sally is expressing when she makes her claim on Steve to withdraw his claim. She clearly has an interest in not saving Steve, but what interest does she specifically have in Steve withdrawing his claim on her for help? He is merely asking her for her assistance and his request itself may have no effect on whether she helps him or not.

The other problem with this proposal is more complicated. Two claims conflict, according to the definition of conflicting claims we are considering, when it is not possible for both of them to be satisfied. In order for a claim to be satisfied or unsatisfied, however, that claim must exist. If I make a claim on you to do something for me next week but I withdraw my claim tomorrow then, whether or not you eventually do what I previously asked, my original claim is neither satisfied nor

unsatisfied because it does not exist anymore. A claim, in other words, cannot be satisfied or unsatisfied after it has been withdrawn. We are supposing, therefore, that two claims conflict just in case there is no possible world in which 'claim 1 is satisfied' is true and 'claim 2 is satisfied' is true. If we assume that claim 2 is withdrawn and stays that way then, according to one commonly accepted theory of descriptions, the statement 'claim 2 is satisfied' is neither true nor false in every possible world in which that claim does not exist.<sup>22</sup> Therefore, the statement 'It is impossible for claim 1 and claim 2 to be jointly satisfied given that claim 2 has been withdrawn' also has no truth value, which means that claim 1 and claim 2 cannot conflict with one another once claim 2 no longer exists. If we assume, then, that Sally's demand on Steve to withdraw his claim is satisfied then Steve's claim would no longer exist. But if Steve's claim no longer exists then there is no answer to the question of whether it is possible or impossible for his claim to be satisfied alongside Sally's claim. Therefore, Steve's claim for help and Sally's second-order demand that Steve withdraw his claim do not conflict with one another in the sense we are supposing.<sup>23</sup>

We are left wondering, then, what claim Sally could make on Steve that would conflict with the claim he has made on her for help, and so provide an

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<sup>22</sup> See (Russell 1905; Strawson 1950) and, for an opposing view, see (Russell 1957).

<sup>23</sup> The crucial, but perhaps controversial, assumption of this argument is that a claim can be satisfied or unsatisfied only if it exists. If this supposition is correct then the following claims have no truth values because: (1) There exists a possible world in which Steve's claim is satisfied and Sally's claim is satisfied; (2) No possible world exists in which Steve's claim is satisfied and Sally's claim is satisfied. These claims have no truth value because any world in which Sally's claim is satisfied is a world in which Steve's claim no longer exists. According to the conception of competing claims we are considering, however, the claims of Sally and Steve are not in conflict just in case (1) is true and (2) is false; and their claims are in conflict just in case (1) is false and (2) is true. Therefore, because (1) and (2) are neither true nor false, there is no answer to the question of whether, on this conception of conflicting claims, Sally's claim and Steve's claim are in conflict with one another. Thanks to an anonymous reviewer for pressing me to clarify this argument.

occasion for a principle of mutual aid to apply. A remaining option is to expand the conditions in which claims are in conflict with one another. One way of doing so is to say that two or more claims stand in conflict if (1) it is not possible for the claims to be jointly satisfied or if (2) a likely consequence or a likely cause of the satisfaction of one or more of the claims is that one or more of the other claims is not satisfied. Two claims that can be jointly satisfied, on this view, nonetheless conflict with one another if the satisfaction of one of them is likely to causally interfere with the satisfaction of the other or if the satisfaction of one of them is likely to come about only as a result of the other not being satisfied. The vague notion of what is 'likely' can be left for substantive moral conceptions to interpret, but if we incorporate this account of conflicting claims into Rawls' definition of right then that definition can apply to many of cases where we ordinarily think it applies.

Suppose that Sally is reluctant to help Steve because she has a strong desire to avoid even the minimal costs of doing so. She knows, however, that she is susceptible to being coerced, manipulated or pressured by other people into acting against this interest. We can imagine, then, that Sally has a derivative interest that others avoid putting pressure on her to provide assistance, which she expresses by making a claim on Steve and others for the *liberty* to decide for herself whether to help. Persons are at liberty to do or not do something, according to Rawls, "when they are free from certain constraints either to do it or not to do it and when their doing it or not doing it is protected from interference by other persons."<sup>24</sup> What

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<sup>24</sup> TJ 177.

Sally demands, in other words, is that Steve and others not engage in certain kinds of interference when she is deciding whether or not to help give aid.

How might Sally's claim for liberty conflict with Steve's claim for help? It is possible for both of their claims to be jointly satisfied because Sally could freely decide to help Steve without being coerced, manipulated or pressured into doing so. These claims, however, causally interfere with one another, in the sense described in the second condition above. To see why, suppose first that Sally's claim is satisfied, which means no one interferes with her choice to help Steve or not. A likely consequence of affording this freedom to Sally is that, in light of her interest in avoiding the personal costs involved, she will choose not to help Steve. Although it is possible that Sally might freely decide to save him, giving her this liberty makes it very likely that she will decide not to do so, which would leave Steve's claim for help unsatisfied and so explain why their claims are in conflict. We can reach the same conclusion from the other direction. Suppose this time that Steve's claim is satisfied, which means Sally has saved him from his predicament. When we consider what would have led her to do so, it is unlikely that she would have chosen to help him by her own accord. What is most probable in this case is that if Sally does in fact save Steve then she did so because she was coerced, manipulated or pressured into helping him by Steve or others. As before, even though it is possible that Sally freely saves Steve or does so by mere accident, the most likely explanation for saving him is that her liberty was violated. Steve's claim for help and Sally's claim for liberty therefore conflict with one another, so their conflict can be properly adjudicated by a principle of right.



### 3. Properly adjudicating conflicting claims

The concept of right, according to Rawls, takes as inputs sets of conflicting claims that persons make on one another or on social practices and gives as outputs proper adjudications of those conflicts. In this section I will examine what it means to *adjudicate* conflicting claims of this sort and to do so *properly*.

#### A. Adjudication

To adjudicate a dispute is somehow to resolve or settle it, but Rawls does not explain what he means by adjudicating a set of conflicting claims. He gives some clues, however, when he discusses orderings and preference relations.<sup>25</sup>

Suppose there is a set of conflicting claims that different persons make on one another or on a social practice. We can define an *alternative* as a possible arrangement or bundle that determines the degree (if any) to which each of the competing claims is satisfied. One alternative is that all of the claims are unsatisfied; another might be that one of the claims is fully satisfied and the others are not; or it could be possible to partially satisfy all of the claims to varying degrees.

Adjudicating among a set of conflicting claims requires comparing possible alternatives for satisfying them so as to determine which of those possible arrangements is better than the rest and just as good as one another. We can say that two alternatives  $x$  and  $y$  are *comparable* to one another just in case one and only one of the following relations holds between them: 'x is superior to y', 'y is superior to x' or 'x and y are indifferent to one another.' Two alternative ways of satisfying a

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<sup>25</sup> TJ 115-6, where Rawls discusses orderings and cites (Arrow 1963; Sen 1970) whose work I also draw on in my account of adjudicating conflicting claims.

set of competing claims are incomparable just in case they are not comparable in this sense.

Different conceptions of right will specify different standards and criteria for applying these relations. A form of utilitarianism can rank possible alternatives by the overall happiness that would result if the claims were satisfied in those ways. A 'proper' adjudication, on this view, is the set of alternatives that would maximize utility if they were to exist. A non-teleological view could rank alternatives based on whether they include certain kinds of actions. Trial by combat or lotteries can also be ways of ranking alternatives.

If we are able to make enough pairwise comparisons between the alternative possible ways of satisfying a set of conflicting claims, we can determine the alternative or alternatives that are ranked more highly than all of the others but ranked equally to one another. A conflict of claims is *adjudicated* just in case there is a set of alternatives for resolving it such that each of those alternatives is superior to every alternative (if any) that is not in that privileged set and is indifferent to every alternative in the set.

### **B. Proper adjudication**

Principles of right, according to Rawls, are not only supposed to adjudicate among conflicting claims, but they are also supposed to do so *properly*. The concept of a 'proper' adjudication, however, does not place additional requirements on principles of right. He seems to think that any principle of adjudication can count as proper and that substantive theories of right are instead needed to interpret that idea.

When Rawls proposes what he calls 'formal constraints on the concept of right', such as generality, universality or publicity, it may nonetheless seem as if he is including further conceptual criteria in his definition of right for what counts as a 'proper' principle of adjudication. He explicitly cautions against this misunderstanding, however, when he says:

"I do not claim that these conditions follow from the concept of right, much less from the meaning of morality... There are many constraints that can reasonably be associated with the concept of right, and different selections can be made from these and counted as definitive within a particular theory."<sup>26</sup>

Formal constraints on the concept of right are abstract features of substantive theories of right that figure in how those conceptions interpret the problem that principles of right are supposed to solve. Other substantive theories of right may include different formal constraints than the ones Rawls includes in his substantive framework. According to Rawls, the test for whether a set of formal constraints is most reasonable is not whether they derive from the concept of right itself but whether they match our considered moral judgments on due reflection.

### **C. From proper adjudication to duties and standards of right**

When a conflict of claims is adjudicated, there is a set of alternative arrangements that are indifferent to one another but superior to all of the other alternatives. How do these determination translate into moral requirements on persons or social practices? One problem is that many cases involve multiple sets of

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<sup>26</sup> TJ 112. See also TJ 507.

conflicting claims, so just because we have determined the best way of resolving one set of competing claims does not mean that this arrangement should obtain all things considered. We can address this problem by saying that when a set of conflicting claims is adjudicated then there is *reason to judge* that it is right for each claim to be satisfied or not according to the set of alternatives that adjudicate that dispute. In cases in which there is more than one best alternative, adjudicating the dispute means that there is reason to judge that it is right to satisfy the claims in one of those ways and permissible to satisfy them according to any of those alternatives. Once we have properly adjudicated a complete set of competing claims then we judge that it is right *all things considered* for those claims to be satisfied or not according to the set of alternatives that are superior to all of the others and indifferent to one another.

According to the expanded definition I have proposed, the concept of right is a function from (i) demands on behalf of interests that persons make on one another or social practices when it is not possible to satisfy these claims together or when the satisfaction of one or more of them causally interferes with the satisfaction of the others to (ii) a set of proper alternative arrangements for satisfying those claims in which each alternative is ranked more highly than any other possible alternative and is ranked equally to every alternative in the set.

#### **4. Some implications**

My aim in this section is to describe and partially evaluate three implications of this definition of the concept of right.

## A. Structure our moral thinking

A complete conception of right, according to Rawls, would specify principles for “each major concept falling under the concept of right,” including the concepts of justice, fairness, fidelity, mutual respect and beneficence.<sup>27</sup> If we distinguish among different types of claims that persons might make on one another or on social practices then we can define various concepts that fall under the concept of right, which can in turn help to structure how our substantive moral frameworks address the specific problems these conflicts raise.

The claims that persons make on one another or on social practices can be distinguished by (1) the type of person who is making the claim, such as a natural person, an association or a nation; (2) the interest that the person is expressing, whether it is her interest or the interest of another person or non-person; (3) the object of the person’s claim, whether it is a claim on a person or social practice of some type; and (4) what is being demanded, such as that someone act in some way or that a social practice be arranged in some way. This schema allows us to distinguish various types of conflicting claims and to assign different concepts of right to each of them. Here are a few examples:

One type of conflict of right exists when: (1) Two or more persons make conflicting claims (2) on the basis of any interests (3) on a social practice (4) for “basic rights and liberties” or for the benefits that the practice produces or makes possible. The concept of *social justice*, according to Rawls, is defined as the proper

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<sup>27</sup> TJ 95.

adjudication of these conflicts.<sup>28</sup> We can further distinguish domestic justice, which adjudicates such disputes when the relevant claims are made by natural persons on the basic structures of society, from international justice, which balances such claims that peoples make on international social practices, and from associational justice, in which persons make such claims on private associations of other kinds.<sup>29</sup>

Other kinds of conflicts arise when persons make demands on one another to support, comply with or not undermine social practices. For example: (1) A person makes a claim (2) on the basis of any interest (3) on another person (4) to support and comply with just social practice that exists and apply to him independently of his voluntary choices or to establish, further and not undermine just social practices of all kinds. When this claim competes with the other person's liberty claim to act or not to act in these ways free from interference by others, the role of the concept of *individual justice* is to properly adjudicate these conflicts.<sup>30</sup>

Conflicts can also arise that need not involve social practices. The concept of mutual respect, for example, adjudicates conflicts in which (1) a person (2) makes a claim on another person (3) on the basis of any interest (4) to show proper recognition of the inherent worth and dignity that someone has as a person, while the other person demands the liberty not to do so.<sup>31</sup> The concepts of honesty, non-maleficence, mutual-aid, and others can be defined in similar ways depending on what kinds of acts we demand that someone perform or not perform.<sup>32</sup>

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<sup>28</sup> TJ 6-10, 47, 53, 113 178; LP 49-52, 85; JAF 54; KCE 256.

<sup>29</sup> TJ 6-10.

<sup>30</sup> TJ 99-100, 192, 255, 275, 295-6, 302.

<sup>31</sup> TJ 297, 513-14.

<sup>32</sup> TJ 94, 98, 298, 385, 413, 416, 427; LMP 10-11

Finally, some concepts of right adjudicate conflicts involving claims made on behalf of persons or non-persons. The concepts of compassion and humanity, for example, adjudicate disputes in which (1) one person makes a claim (2) on another person (3) on the basis of an interest of a person or non-person, such as a non-human animal, (4) to help or avoid harming a person or non-person, while the other person demands the liberty not to do so.<sup>33</sup>

### **B. Duties of right to oneself are impossible**

Principles of right, according to the definition I have offered, only adjudicate disputes in which persons make claims on one another or on social practices. Self-regarding duties of right, say to avoid suicide or servility, are therefore impossible. Others may have a claim on me not to commit suicide, for example, and I may have a competing claim on them not to interfere with my decision about whether or not to do so, but an adjudication of these conflicts could only generate a duty to those people not to kill myself. I may have competing claims on myself about whether to commit suicide but these claims cannot be adjudicated by principles of right. It is impossible, therefore, to treat oneself rightly or wrongly, although there may be other moral concepts, such as the concepts of 'good' and 'virtue', that can generate self-regarding moral requirements.

### **C. Circumstances of Right**

The concept of right, according to Rawls, is supposed to adjudicate all kinds of conflicting claims that persons might make on one another and on social

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<sup>33</sup> TJ 448.

practices. A surprising and perhaps troublesome implication of this definition, however, is that the concept of right only applies in certain circumstances.

The idea of justice, according to Hume, is possible and useful only in certain empirical circumstances, such as when others 'make us feel the effects of their resentment' and when there is a 'scarcity [of goods] in comparison with the wants and desires of men.'<sup>34</sup> When these 'circumstances of justice' do not obtain then Hume thinks the idea of justice has no application.

Many philosophers have tended to agree with Hume that certain principles of right apply only in specific conditions, such as principles of justice that govern social practices or principles of fidelity that require conformity to institutions of promising. But they also tend to think that some principles of right that govern the conduct of individuals apply to them in all times and places regardless of their circumstances. Rawls' definition of right breaks from this tradition because it presupposes certain empirical conditions that must be met in order for an act or a social practice to be right or wrong.

The most general *circumstances of right* are that (a) two or more people have actually made claims on other people or on a social practice and (b) those claims are in conflict with one another. Only when these conditions obtain does a conflict exist that can be adjudicated by a principle of right. If two people have not made conflicting claims on one another with regard to some act, and if no one else has done so either, then there is nothing for the concept of right to adjudicate, so the act in question is neither right nor wrong, no matter how despicable it may be.

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<sup>34</sup> (Hume and Beauchamp 1998 3.18; Hume et al. 2000 3.2.2.16).



There are various reasons why two or more persons might not make claims on one another or on social practices. They may have all managed to satisfy their interests completely without any need to make such demands; they may lack self-respect or fear the repercussions of making such claims; or perhaps they fail to recognize their own interests or those of other creatures.

Suppose, for example, that some members of a community are somehow impervious to any constraints that others might try to place on their actions. We can imagine that these powerful people do not make liberty claims on others because doing so would not serve their interests. If members of the less powerful group were to demand that members of the more powerful group refrain from harming them then it is possible that no set of conflicting claims between these groups would exist, which would mean that, other things equal, it is neither right nor wrong for the stronger group to harm the weaker group.

Or, imagine a community of saints who are each working selflessly, tirelessly and harmoniously for the same religious values. We can suppose that the claims these people make are never in conflict because they are always put forward in service of promoting the same fundamental interests that they all share. Such a society, according to Rawls, has “eliminated the occasions when the appeal to the principles of right and justice is necessary.”<sup>35</sup>

A deep worry one might have with these examples is that two or more persons may be free of conflicting claims because some of them were subordinated into adjusting their interests to match those of the dominant group or coerced into

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<sup>35</sup> TJ 249.

withdrawing their claims when these might come into conflict with the claims of others. According to Rawls' definition, there is no occasion for the concept of right to apply in communities of this sort if there are no competing claims to adjudicate.

In response to this concern, Rawls claims that the concept of right could still have an important role in assessing the conditions leading up to arrangements in which persons do not make conflicting claims and so, indirectly, in evaluating those arrangements themselves. If the members of a community made competing claims in the past, before they achieved harmony in their interests or in their unwillingness to make demands, then a proper balancing of those previous claims may imply that their methods for securing unanimity were not rightful. If these people achieved harmony as a result of coercion that conflicted with principles of right, for example, then their current arrangement may be criticizable as a matter of right even though no competing claims currently exist.<sup>36</sup>

## 6. Conclusion

My aim has been to describe a plausible version of Rawls' definition of the concept of right that is consistent with basic aspects of his approach to moral and political philosophy. One might wonder, however, why we should agree with Rawls that he has essentially characterized the basic moral domain of right and wrong. Rawls' definition, as I have explained it, has affinities with Hume's thought that creatures who cannot make their resentment felt are not owed justice and with Kant's idea that right is mostly a matter of justice. Rawls' concept of right, however,

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<sup>36</sup> TJ 249.

is at odds with a broader, commonsense notion of 'right' that applies to fully justified responses to many kinds of questions, including ones about what how to treat oneself as well as how to treat persons or non-persons who can suffer but who do not make demands. In closing, I will make two tentative suggestions about why Rawls, at least, may have thought that the problem of adjudicating conflicting claims is so important to normative ethical theory.

First, Rawls' definition of right may be connected with his claims that "the right draws the limit; the good shows the point," that "[t]he Reasonable presupposes the Rational, because, without conceptions of the good that move members of the group, there is no point to social cooperation nor to notions of right and justice" and "[a]s complementary ideas, neither the reasonable nor the rational can stand without the other."<sup>37</sup> There are various ideas that Rawls expresses in these passages, but one of them seems to be that the concept of right would have no purpose or application if persons did not have aims, aspirations, commitments and other interests of that lead them to make conflicting claims on one another and on their social forms. The competing demands that we regularly observe, Rawls may think, lead us to recognize the need to specify restrictions on what we or social practices may or may not do in pursuit of goals and convictions. It is the claims that persons or non-persons make, and the fact that these can come into conflict with one another, that give a significant part of morality its point.<sup>38</sup>

A second connection may be to the way Rawls understands the concept of justification, which he says is always "addressed to those who disagree with us, or to

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<sup>37</sup> LMP 231; KC 317; PL 174. See also PL 52.

<sup>38</sup> See Williams (1981: 18-19).

ourselves when we are of two minds.” Justification, on his view, presupposes disagreement among persons or within a person and aims to reconcile such disputes by reaching agreement on the basis of reason from premises that are held in common.<sup>39</sup> When we are all in full and reasoned agreement with ourselves and with one another then there is nothing for us to justify to anyone. Rawls may have thought that some of the most persistent sources of disagreement among persons is that they have competing interests that lead them to make conflicting claims on one another, so one of the main aims of moral philosophy should be to find agreement on principles of right for adjudicating these disputes.

Whatever its merits may be, Rawls has described a challenging, puzzling and intriguing definition of the concept of right that structures a distinctive approach to moral philosophy and that perhaps deserves to be further developed and assessed in its own right.

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<sup>39</sup> TJ 16, 508.

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