

15. Is it possible to wrong someone without violating any of their moral rights?

It is possible to wrong someone without violating that person's moral rights. Before I begin, note the prompt is open to an existential answer: if there is even one case where so wronging is possible, then the answer is 'yes'. I motivate two examples of where it's possible to wrong someone without violating that person's rights. Note to accept the thesis of my essay (the answer to the question is 'yes'), one only needs to accept one of my examples. Each is sufficient, neither—alone—necessary. After introducing the doctrine of correlativity as applied here, I motivate the counterexample of a third-party beneficiary to a promise. Then, I motivate the simpler case of someone whose interests have been violated, but where those interests were not sufficiently important to be the ground of one of the wronging party's duties. Altogether, the essay motivates the claim that it's possible to wrong another without violating that person's rights.¹

First, why is the doctrine of correlativity relevant? It might seem, *prima facie*, the question isn't interested in the relationship between duties and rights, but instead wrongs and rights. In a way, this is true, but if we accept the doctrine of correlativity (as I do) then we could simply rephrase the question to read 'Is it possible to wrong someone without violating any moral duties one has towards that particular person?' I use this construction later in the essay, and for clarity I give a brief outline of the doctrine of correlativity, though I emphasize, only an outline, not a proper argument.

The doctrine of correlativity harkens back to Hohfeld, who made this a definitional point about (claim) rights and duties (mostly in a legal context, though it can easily be applied in the moral one). You have a right not to be assaulted by me if and only if I have a duty not to assault you. In simple cases, it seems obvious the correlativity holds: to identify a duty (not to assault you) is to identify a right (not to be assaulted by me). Kramer rightly emphasizes the intrinsic, analytical nature of the correlativity, using as his analogy a slope which slopes downward when one observes it from above necessarily slopes upward when observed from below. There are various unsuccessful but significant counterexamples used to attempt to refute the (analytical) doctrine, but I omit them because of space. Doctrine of correlativity in hand, I precede.

My first counterexample is of a third-party beneficiary to a promise (the moral equivalent of the legal-version third-party beneficiary to a contract). I promise you I'll care for your grandmother in her old age. You rely on this promise, move far away, and reassure your sister that the burden will not fall upon her. She relies on your reassurance to buy a house on the other side of the country, and she and her new family settle down. A decade later, when the time comes for me to fulfill my promise to you, I break it. You cannot return from where you are (postulate some remote, impossible place: you've become a researcher over-wintering on Antarctica, where flights cannot

¹ I don't consider the case of interpreting rights according to the will theory. According to that theory, enough things do not have rights that it is trivial to come up with examples of wronging things without rights (e.g. children by depriving them of state-mandated education, etc.). For this *particular* question, the interest theory is a more interesting approach.

land in winter.) Your sister must uproot her family to care for your grandmother. Undoubtedly, her husband and children are wronged by my action: their interests (a stable home, etc.) have been set back, but caring for your sister's family's interests is not a standard duty of mine; and nor did I promise your sister anything at all. It is uncontroversial that I wronged you and violated a moral right of yours, but my point is that I also wronged your sister and her family, although I had no duties as regards her and her family (so, per the doctrine of correlativity, they had no rights I could've violated).

The obvious counterargument to the example is simply to extend the notion of (moral) duties and rights to include your sister and her family (and your grandmother!). Obviously, the counterargument might say, this is unwieldy in a legal context, but this is a moral—not a legal—one. I still think the unwieldiness weighs against this. Consider the sister's children, who may attend a fee-paying school on the brink of economic disaster. When the children are withdrawn, the school no longer has enough revenue and shuts. This puts teachers out of work, causes overcrowding in the other local schools... The chain goes on, when really I promised you something. The special relationship between me and you, separate from relationships I have with others, in virtue of my promise to you specifically, needs to be held central. If we sacrifice the centrality of the right and a duty between you and me specifically, then it seems we have sacrificed a great deal about promising: its ability to instantiate special relationships, which seems to be a central feature of promising. Nevertheless, my assessment of the importance of maintaining the centrality of promising might be rejected by an obvious extension of the counterargument (to stipulate some other central feature of the practice of promising). Thus, in case this discussion is unsatisfying, I move to the second example.

Nearly all theorists about rights (Raz, Kramer, etc.) think that an interest of one person is an insufficient (though often necessary, depending on the theorist) condition for that person to have a right. What I want to highlight is the fact that just because one has an interest doesn't mean one's interest grounds a right or duty. You and I are casual, not close, friends, and go to the same party. At the party, I say hello, and you briskly say hello and quickly walk away. It is not so rude that I have lost significant dignity, but I might feel hurt, embarrassed or insecure. You might come back later and say 'I'm sorry: I was wrong to do that. I was having a bad day'. I might say 'it wasn't just that it was wrong for you to do it, it is also that it hurt my feelings—it wasn't a wrong in general, but one applied to me'. All this makes sense (you did something seemingly wrong to me), but in a different case, you may never have come back. We might have drifted apart as friends, or had a few months of distance and then become close again, both of us forgetting all about this event. My interests, in having friends, in talking to you, in not being brushed off in public—all these were damaged, but it seems—prima facie—that these were not rights of mine, and nor do you have a duty to treat me well in these ways (recall we are casual friends, not best friends). In short, some interests are possible to damage by wronging, but are not serious enough interests to instantiate rights.

An intuitive counterargument might run that I have a right not to be brushed off, and you had a duty to me to be nicer. (These are moral, not legal rights, so it's not as if your violation of duty will

lead to prison or cluttering the courts, after all.) Possible as a rejoinder though this counterargument undoubtedly is, I think it makes two crucial mistakes about morality.

First, it degrades the force of 'right'. Rights are supposed to be things important to us, and the expanding of rights-talk lowers the evocative power had by rights. While one might argue the interest in not being brushed off and the interest in certain paradigmatic rights is a difference of degree rather than of kind, differences of degree (at this magnitude) are still highly salient features in the categorization of moral terms.

Second, it instantiates an unpleasant number of duties. To see this, I explain something which—for a few sentences—may seem irrelevant but isn't. Fuller distinguishes between two realms of morality: the duty realm and the aspiration realm. Duties, of course, comprise the things we must do: refrain from thieving, keep (at least most) promises, etc. The realm of aspiration instead involves our picture of the best things we can be, and striving towards that: things that we might be praised for, but that we are not generally blamed or punished for not doing. Fuller claims that the pushing up of the dividing line so the duty-realm becomes more and more capacious leaves participants in a moral community feeling irritated and eventually disenfranchised from the moral practice. (Consider some who 'burnt out' on following particularly strict College rules during the later lockdowns.) Why is this relevant? Because if we allow that you had a duty not to brush me off, then we've pushed up the dividing line between duty and aspiration quite high. As well as weakening the force of my rights, the expansion also unpleasantly moralizes you. Some things are wrong—miss the mark of doing good—without sinking to the level of a violation of duty. If we say that every wrong which violates an interest also violates a right, then we seem to have lost the important differences between moral terms such as 'must' and 'should' or 'right' and 'interest'. These are distinctions we ought to keep if we can.

In this essay, I clarified my understanding of the prompt by allowing for its consideration in terms of duties as well as rights (per the doctrine of correlativity). I then attempted to motivate two counterexamples to the prompt, each of which is sufficient to motivate the claim that the answer to the question is 'yes'.