**Rights, duties and reasons**

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Aim: to explain the relation between rights, duties and reasons

Some facts are **mere reasons**:

The fact that it is a beautiful day is a reason for me to go for a walk. The fact that it will reduce the chance of environmental damage is a reason to walk only along the designated paths in the national park.

In some contexts, these reasons might be duties: I might really owe it to myself to take a break now. I might have a duty – based on the park bye-laws – to stick to designated paths.

In other contexts, these reasons might be related to background standing duties of self-care and beneficence-to-the-environment.

But if I’m already fully fulfilling my duties of self-care and beneficence, these reasons might be simply reasons to act, that don’t have the status of duties.

**Rights theorists rely on a distinction between duties (obligations, oughts) and mere reasons:**

IT: Why doesn’t any reason constituted by the fact that an action will serve someone’s interests qualify as a duty owed to that person as their right?

WT: Why doesn’t any reason over which a person has powers of waiver/cancellation/annulment qualify as a duty owed to that person as their right?

My Addressive Theory: Why doesn’t any reason which formally requires the person for whom it is a reason to think of another as ‘you, to be acted on’ qualify as a duty owed to the latter person as their right?

Allowing ‘mere reasons’ to qualify as rights when they fulfil the IT/WT/AT’s conditions would be hugely over-inclusive. The theorist needs to say that **duties** that fulfil the relevant conditions are rights.

**What distinguishes duties from mere reasons?**

* Permissible ***enforceability*** (Mill, Skorupski, May)

BUT (1) This seems to be sufficient for a reason to be a duty, but not necessary. There can be unenforceable legal duties (Kramer) and unenforceable moral duties (duty of gratitude, right to a say in family decisions (Sen)).

(2) What does ‘permissible’ mean? It can’t be ‘no reason not to’ (for there will very often be *some* reasons not to enforce), but has to be ‘no duty not to’. Circular.

* Failure to act on them justifies ***reactive attitudes and actions*** like resentment, punishment, forgiveness, apology (Darwall, Hart, Owens)

BUT (1) Again seems sufficient but not necessary. *Justifiably infringed* duties should not trigger reactive attitudes – or not the same ones. Nor should ‘purely legal’ duties.

(2) Which attitudes are the right ones? Cannot be just any old attitudes involving a judgement about the duty-bearer’s will. I can justifiably resent\* my neighbour for phoning me too often for help, even if they have not thereby violated any duty. Similarly, I can adversely evaluate my neighbour’s will in choosing to leave their grey render unpainted – I can even resent\* this although they have simply ignored aesthetic and neighbourly *reasons*, not duties. To isolate the relevant attitudes, we need something circular: “those reactive attitudes justifiably triggered by duty violations as opposed to simply overlooking reasons – such as resentment proper rather than resentment\*”.

* Duties have a distinctive **practical importance** that mere reasons lack: duties silence/exclude (McDowell, Raz) or outweigh certain countervailing reasons in a way that mere reasons do not.
* How does a reason that *silences/excludes* factors A, B, C differ from a reason that *outweighs* factors A, B, C? The difference shows up in (a) the agent’s psychology; (b) lack of remainders.
* BUT: These differences seem hard to identify in practice.
* Do we need something structural like silencing/excluding as opposed to “strong outweighing ability”? Maybe yes, because duties do not always win in conflicts with mere reasons: e.g. a ‘white lie’ can involve justifiable dishonesty (duty infringement) for the sake of a quiet life (mere reason). ???
* But can some mere reasons silence/exclude? As basic reasons, ‘it’s a beautiful day’ seems to exclude/silence ‘my picture frames are wonky’ in determining whether I should go out for a walk or stay in and tidy up.
* Main point: either outweighing or silencing/excluding is scalar: more or less can be outweighed or silenced/excluded. Do we then get more or less of a duty as opposed to a mere reason?
* Complementary proposal about duties’ distinctive practical importance: duties are reasons that **should be treated as intentions** (cf. Thomson on duties as non-voluntary commitments; intentions have an ‘exclusionary’/’silencing’ psychological character)

Duty to PHI = reason to PHI that we are permitted to assume you intend to act on

Weil: “At the bottom of the heart of every human being, from infancy until the tomb, there is something that goes on indomitably expecting, in the teeth of all experience of crimes committed, suffered, and witnessed, that good and not evil will be done to him.” (2005 [1943], 71).

Duties are those reasons that we legitimately expect will be acted on - or we expect at least that agents *intend* to act on them. When duties conflict, this is akin to a conflict of intentions.

BUT: (1) fulfilling this condition seems necessary but not sufficient for a reason to be a duty. Sometimes we are permitted on epistemic grounds to assume that you intend to act on a mere reason: e.g. suppose you tell me that you plan to go out to enjoy the beautiful day.

(2) Does ‘permitted to assume’ again mean ‘no duty not to’? No duty not to plan my behaviour on the assumption you will do as duty requires? Or is ‘permitted to assume’ more epistemic than this – more like ‘epistemic warrant for assuming’?

* Necessary and sufficient condition: **demandability** (Gilbert, Feinberg)

Duty to PHI = reason to PHI that is (ceteris paribus) demandable

What is it for a reason to be demandable?

* In demanding that you do PHI, I do not create a *new reason or duty for you to do PHI*.
* Nor do I trigger bad consequences (e.g. resentment/rectification etc) at your not-PHI-ing *in virtue of my demand*. Such consequences are justifiably triggered by the non-performance of the duty independently of whether it was demanded (*contra* May & Skorupski).
* But demanding is also not ‘purely epistemic’: it is not simply drawing attention to your reason to PHI.
* Speech act theory: demands are like commands in having ‘world-to-word’ direction of fit (Valentini). It is just that they pertain to pre-existing reasons rather than creating them.

BUT what does this mean? Suggestion:

Demanding as calling to account: When my reason to PHI is demandable by someone, then if that person demands that I do PHI and yet I do not do it, I \*must\* *explain* *to them* why I have not done it. When my reason to PHI is demandable, someone can *call me to account* for (not)PHI-ing. Someone has the Hohfeldian power to make it the case that I \*must\* account for (not)PHI-ing.

The account or explanation offered should be first-personal, offered within the ‘space of reasons’ – e.g. a justification or excuse rather than a third-personal explanation of the duty-violating action purely in physical or social-scientific terms.

BUT: What does \*must\* mean above? When demanding, is the demander exercising a Hohfeldian power to create a new *duty* that the original duty-bearer account for themselves to the demander? Or does the demander simply create a new *mere reason* for the duty-bearer to account for themselves to the demander?

Trouble: It looks like it must be ‘duty’: (1) It’s a powerful ‘must’ that is different in quality from my reason to account for myself because it would be entertaining to do so. (2) Anyone has the Hohfeldian power to make anyone else have a *mere reason to explain themselves* simply by asking why they are doing what they are doing. This power accompanies mere-reasons-to-PHI as much as duties-to-PHI. So demanding must involve a special sort of accounting – that appropriate to infringement of a *duty*, not just ignoring a *mere reason*.

**Summary**

Is my PHI-ing a matter of duty, or a mere reason?

1. Does someone have no duty not to enforce my PHI-ing? Then it is a matter of duty.
2. Would my not-PHI-ing justify duty-style reactive attitudes? Then it is a matter of duty.
3. Does the importance of my PHI-ing have some outweighing/exclusionary weight in determining what I should do? If not, then it is not a matter of duty.
4. Are others epistemically warranted in assuming that I intend to PHI? If not, then it is not a matter of duty.
5. Does someone have Hohfeldian power to make me duty-bound to account to them for my not-PHI-ing? If so, then it is a matter of duty; if not, then it is not a matter of duty.

Only (C) looks close to being necessary and sufficient *and* non-circular. But it relies on the vague notion of outweighing/exclusion, and if read as necessary and sufficient for a duty, then:

* it rules out the idea of powerful/exclusionary/outweighing ‘mere reasons’
* it rules out the idea of very weak, non-outweighing or non-exclusionary duties
* it destroys the idea of moral permission: because there is almost always *some* moral reason not to do something, ‘moral permission’ on the (C) approach could only mean ‘it’s not too bad to do this’ (you’ll only trigger a weak reason to explain yourself, weak resentment\* etc) rather than ‘it’s perfectly moral OK to do this’. [Maybe we can retain ‘legal permission’: much more often there will be no legal reason not to do something]
* it leaves no space for supererogation – that becomes something like ‘weak further reason to go beyond what you already have strong reason to do’

If these are problems, then it looks as though we cannot escape a primitive idea of ‘duty’ as being distinct from mere reason.

Ugh - this feeds worries about moralism (Anscombe, Nietzsche – thanks Setiya).

Or we might be driven to a sharp law=duty/actual-force vs morals=reason view (cf. ‘rights externalists’ like Darby or Geuss)