



The Concept of Rights: 73 (Law and Philosophy Library)

George W. Rainbolt

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What is it to have a right? Previous answers to this question can be divided into two groups. Some (e.g., Joseph Raz) hold interest/benefit theories of rights while others (e.g., H.L.A. Hart and Carl Wellman) hold choice/will theories of rights. The Concept of Rights defends an alternative to both of the traditional views, the justified-constraint theory of rights. On this view, a person has a right if and only if a feature of that person is a sound justification for others to have a particular sort of normative constraint. The justified-constraint theory avoids the problems which have bedeviled the interest/benefit theories and the choice/will theories. It also solves the puzzle of the relational nature of rights. On the justified-constraint view, an obligation correlative to a right is to the right-holder when it is a feature of the right-holder that justifies the obligation. The analysis also shows that, as far as the concept of rights is concerned, any sort of individual or group can have rights. The limits on what sorts of things have rights are substantive, not conceptual. Moreover, the justified-constraint solves the problem of the rights of past and future generations. It is a theory which applies, without modification, to past, present and future beings. 'With clear exposition, powerful argument and informed incisive criticisms of alternative theories, this book gives a systematic account of an original and important alternative to the best theories of rights in the recent literature.'

Carl Wellman, Washington University, St Louis, USA 'The Concept of Rights is a valuable contribution to the literature on rights. Theorists too frequently propose something like a definition of rights and argue from the definition to controversial, substantive conclusions. Rainbolt avoids this mistake with an analysis of rights as justified, relational constraints. This theory gives an account of what is distinctive about rights without begging theoretical questions; he properly leaves these to normative theory.

Rainbolt writes clearly and decisively. Readers may not agree with him, but there will be little doubt about where he stands. This is no small virtue.'

William Nelson, University of Houston, Texas, USA 'More systematic, nuanced, and sophisticated than almost all other (Hohfeldian and neo-Hohfeldian analyses of rights talk). His peer in this regard is perhaps Judith Jarvis Thomson.'

Richard Arneson, University of California at San Diego, USA 'The most sophisticated [Hohfeldian rights analysis] I have seen.'

David Schmidtz, University of Arizona, Tucson, USA 'First-rate book, the best thing on the subject since Sumner and Thomson's books fifteen to twenty years ago.'

Christopher W. Morris, University of Maryland, College Park, USA 'Advances the positions of Joseph Raz and H.L.A. Hart, perhaps the two most important legal philosophers of the last century'

Douglas Husak, Rutgers, The State University of New Jersey, USA

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