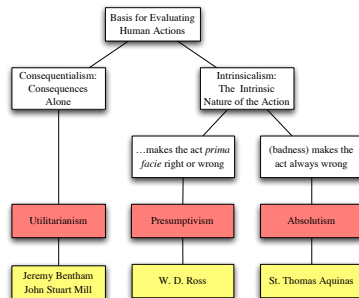


Lecture #4: Presumptivism

1. W. D. Ross' Version of Presumptivism: The Theory of *Prima Facie* Duties

W. D. Ross' Presumptivism

- Intrinsicism
 - Intrinsicism vs. Consequentialism
 - Two Versions of Intrinsicism
 - Presumptivism
 - Absolutism
- Exposition of Presumptivism
- Critique of Presumptivism



Intrinsicism

- Intrinsicism, an alternative to Utilitarianism
 - Thesis: Actions are right or wrong at least partly because of their *intrinsic nature*.
 - I.e., not just because of their *consequences*.
 - This is the reply to Bentham's Challenge.
 - Two kinds of intrinsicism
 - Presumptivism
 - Acts are only *presumptively* right or wrong on the basis of their intrinsic nature.
 - Their *presumptive* wrongness does not make them wrong in every case. One might have to choose the lesser of two evils.
 - Absolutism
 - Some acts are always wrong (regardless of their consequences).
 - For an example (killing the innocent), see Jeffrey Murphy.
 - For a theoretical defense, see St. Thomas Aquinas.

Ross' Presumptivism: The Central Theses

- Pluralism
 - "[Not] every act that is our duty is so for one & the same reason."
- Presumptivism (or, Conditionality)
 - The list of duties is a list of things that would be obligatory, other things being equal, or, as long as they are not over-riden by other duties, i.e., *presumptive* or *prima facie* duties.
- Intuitionism
 - *Prima facie* duties are known to be such by intuition.

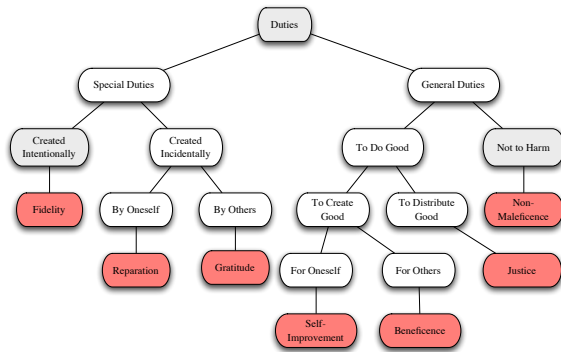
NB: Ross' theory is often called intuitionism, but it could sensibly be named on the basis of any of the three central tenets.

Thesis #1: Pluralism

- "[Not] every act that is our duty is so for one & the same reason."
 - This is directly contradictory to utilitarianism.
- Ross' list of reasons why an act might be right ("right-making characteristics")

fideli	justice	self-improvement
reparation	beneficence	
gratitude	non-maleficence	
- Each is a morally significant *kind* of act.
 - Each is grounded in a different kind of relation towards others.
 - All are equally basic.
 - Gratitude is as good a reason as beneficence for doing something.
- The plurality of duties raises the possibility that the duties might conflict.
 - What is required by one duty might be forbidden by another.

The Foundations of *Prima Facie* Duties



Thesis #2: Presumptivism

- The list of duties is a list of *prima facie* duties.
- Explication
 - Acts are *prima facie* duties if they are obligatory, other things being equal, i.e., as long as they are not over-ridden by other duties.
 - *Prima facie* duties could also be called
 - conditional duties
 - presumptive duties
- Significance
 - “An act ... can fall under various categories.”
 - The existence of multiple duties can create practical contradictions—the duty to do two incompatible things.
 - The contradiction is resolved by making a distinction.
 - But the theory requires principles of conflict-resolution.

Thesis #2: Presumptivism (cont'd. 1)

- The existence of multiple duties creates practical contradictions—the duty to do two incompatible things.
 - One has an obligation not to harm others (non-maleficence)
 - One has an obligation to defend one’s country (beneficence, gratitude)
- [The contradiction is resolved by making a distinction.]
- [But the theory requires principles of conflict-resolution.]

Thesis #2: Presumptivism (cont'd. 2)

- [The existence of multiple duties creates a practical contradiction.]
- The contradiction is resolved by making a distinction.
 - The distinction
 - The duties on Ross’ list are *prima facie* duties
 - What one should do in a particular situation is an *operative* (or actual) duty (or a duty proper)
 - Its significance
 - To say that one actually has an [operative] duty to do two inconsistent things is incoherent
 - To say that one has *prima facie* duty to do two inconsistent things is a commonplace
 - Its application
 - One has *prima facie* duty not to harm others (non-maleficence)
 - One has a *prima facie* duty to defend one’s country (beneficence, gratitude)
 - What one should do in each case (one’s operative duty) depends on which *prima facie* duty is stronger
- [But the theory requires principles of conflict-resolution.]

Thesis #2: Presumptivism (cont'd. 3)

- [The existence of multiple duties creates a practical contradiction.]
- [The contradiction is resolved by making a distinction.]
- But the theory requires principles of conflict-resolution: Which *prima facie* duty overrides which when?
 - Ross’ resolution
 - There are no rules of conflict resolution.
 - There is no systematic priority of some duties over others.
 - It is not the case that beneficence or even nonmaleficence always take priority over other duties.
 - The most we can say is
 - Perfect duties tend to have priority over imperfect.
 - One looks at the situation and figures out what to do.
 - » This *not* intuitionism, he does not claim that you know *intuitively* what to do.
 - Lewis & Walzer show how this reasoning should be done.

Thesis #3: Intuitionism

- *Prima facie* duties are known to be such by intuition.
 - Intuition is a basic insight into the nature of things (i.e., one not based on argument)
 - This thesis is severable from the other two; one could hold that there are a number of duties, each of which holds only *prima facie*, but deny that they are known by intuition

Thesis #3: Intuitionism (cont'd. 2)

- Kinds of knowledge alleged to be intuitive
 - Mathematics—the intuitionists' stronghold
 - $1+1=2$
 - Any straight line segment can be extended indefinitely in a straight line.
 - A straight line segment can be drawn joining any two points.
 - The basic principles of philosophical & scientific knowledge
 - The Law of Non-contradiction: Nothing can be & not be in the same way at the same time.
 - The Principle of Causality: Every event has a cause.
 - Ethics
 - Ross' *prima facie* duties

Thesis #3: Intuitionism (cont'd. 3)

- Intuitive Moral Knowledge
 - One can see that an act of injustice has something wrong with it just by thinking about what injustice is.
 - Anyone who cannot see that there is something wrong with harming other people, is insane (incapable of telling right from wrong).
 - The M'Naghten Rule (1843), the classic common law test for criminal liability:
 - Insanity (as a defense against criminal charges) consists in
 - » not knowing the nature & quality of one's action, or
 - » (though knowing that) not knowing that what one is doing is wrong

II. Applying the Principles of Presumptivism

Moral deliberation is determination of which *prima facie* duties are relevant to the situation, & which duties override which in the situation.
Moral discourse is the demonstration of the same.

III. Objections & Replies

Objection	Reply
1. Intuitionist theories tend to bias in favor of the status quo since contemporary practice will seem intuitively proper.	Intuition only provides knowledge of the most general truths of morality. It does not provide any immediate knowledge of the rightness of particular practices (e.g., war or slavery).
2. A simpler (monistic) theory would be preferable .(e.g.all the duties could be derived from a single fundamental duty such as the utility principle	"Loyalty to the facts is worth more than a ... hastily reached simplicity." It is simply not true that all duties are reducible to utility or any other duty. The duty to keep one's promises is not just our duty because it promotes utility; these are equally basic insights into what is right.

III. Objections & Replies (cont'd. 1)

Objection	Reply
3. Ross' theory is radically incomplete—it does not tell us how to resolve conflicts of duties.	This is a remediable defect: There are ways to assess how stringently a duty holds in a particular situation. E.g., the stringency of fidelity (promise-keeping) depends on what was said or understood when the promise was made ("I'll meet you at 3." vs. "I promise to meet you..." vs. "I solemnly swear to meet you...")

III. Objections & Replies (cont'd. 2)

Objection	Reply
4. Some acts are absolutely forbidden, not just forbidden <i>prima facie</i> .	This is a more serious objection: <ul style="list-style-type: none"> • The kinds of actions which are said to be absolutely forbidden are fairly specific (e.g., killing the innocent, adultery) where Ross' <i>prima facie</i> duties are fairly general. • Nevertheless, presumptivists generally do not believe that actions which absolutists forbid are always wrong. See Ross & Walzer on killing the innocent.

2. Another Version of Presumptivism: A Theory of *Prima Facie* Rights

Other Versions of Presumptivism

- The key idea in presumptivism is that moral considerations (e.g., one's own duties, the rights of others) can be overridden by other considerations.
 - Such a theory must give
 - a list of rights, duties, or prohibitions that constitute its principles
 - some idea of how one principle comes to override another
- Many different theories might be of this type, e.g.,
 - Jefferson (Declaration of Independence) & Locke (2d Treatise on Government)
 - Everyone has a right to life, liberty & the pursuit of happiness (Jefferson) or property (Locke)
 - These rights are not absolute, but can be overridden
 - a person's right to life may not protect him from capital punishment for a serious crime
 - a person's right to property may not protect him from state's use of eminent domain to seize his property
 - Walzer on non-combatant immunity & its limits
 - People have a (*prima facie*) right not to be killed.
 - So, non-combatants have a (*prima facie*) right not to be killed in war.
 - But in a supreme emergency, this right is overridden. Innocent civilians may be killed in such a case. (See below.)

Four Kinds of Rights (Hohfeld's Analysis)

- Claims
 - e.g., "the right ... to have the Assistance of Counsel for his defence. (6th Amendment as interpreted in *Gideon v. Wainwright*)"
- Liberties
 - e.g., "the freedom of speech, or of the press" (1st Amendment)
- Powers
 - e.g., the right to marry
- Immunities
 - e.g., "The right of the people to be secure in their persons, houses, papers, and effects" (4th Amendment)



Wesley Newcomb Hohfeld
(1879-1918)

Rights & their Limits

- How might one justify not treating someone in a way that he has a right to be treated or not allowing him to do something he has some kind of right to do?
 - Some rights are *limited* either inherently or by the existence of strong duties not to exercise them in a certain way
 - A citizen's right to speak his mind is limited by laws against
 - slander
 - incitement to riot
 - The right-holder could *waive* the right
 - A defendant can waive the right to a jury trial.
 - The right-holder could *alienate* the right (i.e., transfer it to someone else)
 - A lottery-winner's right to the prize could be sold to someone else.
 - Living wills & irrevocable proxies also alienate the original right-holders' rights.
 - Can someone alienate his right to liberty by selling himself into slavery?
 - Locke & Jefferson claimed that some rights were inalienable.
 - The right-holder could *forfeit* the right
 - A felon forfeits his right to liberty (& possibly to life).
 - If the right is *presumptive* it could be *overridden* by other considerations
 - A citizen's right to walk the streets might be overridden by considerations of public safety (imposition of a curfew).