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Epistemic rights and legal rights

LEIF WENAR

A Northern Ireland politician declared not long ago that the British people had a right not to believe the IRA's latest statement on disarmament. Therefore, he said, the British government had no right to allow the IRA further representation at the talks. Rights assertions like these are quite common in everyday talk, even if pronouncements linking epistemic and legal rights are less so.

All assertions of rights are, I believe, assertions about conclusive reasons. Here I will defend the following sub-thesis: All assertions of epistemic rights, like assertions of one type of legal right, imply 'conclusive reason' assertions with a certain distinctive structure. Toward the end of the paper I will expand the range of rights included in this sub-thesis.

We begin with two sample rights-assertions, one epistemic and one legal:

- (1) A freshman, his head full of Descartes after a philosophy lecture, moans as he sets down his lunch tray that people have no right to believe anything. A sophomore sitting nearby replies that she has a right to believe that two plus two equals four.
- (2) Your elderly neighbour phones to ask that you not walk around the house naked, or at least not so close to the windows. You respond acidly that were she to consult a lawyer she would find that people have a right to do what they like in their own homes.

In these examples:

'A has a *T* right to \emptyset ' implies 'A has no conclusive *T* reason not to \emptyset '; and

'A has no *T* right to \emptyset ' implies 'A has conclusive *T* reason not to \emptyset ' (where '*T*' is 'epistemic' or 'legal').

The key to these formulae is keeping track of the negations. Consider first a 'no epistemic right' case. Asserting that A has no epistemic right to believe that *p* implies that A has conclusive epistemic reason not to believe that *p*. This is to assert that, for example, A has no evidence for *p*, or that A's evidence against *p* clearly outweighs his evidence for *p*. A has conclusive epistemic reason to be, at best, agnostic about *p*.

Now consider a positive assertion: A has an epistemic right to believe that p . This implies that A has *no* conclusive epistemic reason not to believe that p . That is, it is not the case that A has conclusive epistemic reason either to remain agnostic about, or to disbelieve, p . This is what one implies when one asserts that A has a right to believe that p .

When the freshman asserts that people have no right to believe anything, he implies that people have conclusive epistemic reason not to believe anything. People should remain, at best, agnostic about everything. The sophomore counters that the freshman's fears are insufficient to undermine her belief in a proposition of simple arithmetic. She has a right to believe that $2 + 2 = 4$. Worries about dreams and evil demons provide no conclusive epistemic reason for her not to believe that $2 + 2 = 4$. Her right to believe entails her having no conclusive reason not to believe. All epistemic rights yield to this kind of explication – rights to believe, rights to doubt, rights to infer, and so on.

Your legalistic reply to your neighbour resembles the sophomore's retort. You assert a legal right to do what you like in your own home. You thereby assert that there is no conclusive legal reason for you not to do what you like in your own home. So far as the law is concerned, there is no conclusive reason for you not to walk about naked. Were your neighbour to contradict you – to say that you have no legal right – she would be implying that you do indeed have a conclusive legal reason (a legal duty) not to potter about in the buff.

The type of legal right that you assert in your reply to your neighbour is one of several types of legal rights.¹ All epistemic rights correspond to this type of legal right. For all epistemic rights, and for all legal rights of this type, '... a right to ...' implies '... no conclusive reason not to ...'; and '... no right to ...' implies '... conclusive reason not to ...'.

The structural similarity in the implications of all epistemic and this type of legal rights is sufficient as a first step toward establishing that all assertions of rights are assertions about conclusive reasons. It is the main result of this paper. However, we can go further. For there is an interesting asymmetry between epistemic rights and legal rights that allows us to extend this result to other kinds of rights as well. The asymmetry is that in the epistemic domain having a right to \emptyset makes it *reasonable* to \emptyset , while this is not the case in the legal domain.

The schemata above place an implicit domain restriction into assertions of rights. Having a *type T* right to \emptyset implies having no conclusive *type T* reason not to \emptyset ; e.g. having an epistemic right to believe that p implies having no conclusive epistemic reason not to believe that p . Yet notice that

¹ For those familiar with the Hohfeld's (1919) analytical framework, the legal right here indicated is a privilege or liberty.

having an epistemic right to believe that p is sufficient to make it reasonable *tout court* for one to believe that p . Having an epistemic right to believe that $2 + 2 = 4$ entails its being reasonable for one to believe that $2 + 2 = 4$. This is because the domain of reasons for belief is closed by the domain of epistemic reasons – besides epistemic reasons, there are no reasons for belief. No other sorts of reasons are relevant to the reasonableness of believing.

The legal domain is quite different. Having a legal right to \emptyset does not entail that it is reasonable for one to \emptyset , because the realm of reasons for action is not closed by the domain of legal reasons. There will also be, for example, prudential or moral reasons that will be relevant to the reasonableness of \emptyset -ing. Having a legal right to \emptyset , and so no conclusive legal reason not to \emptyset , does not at all settle the question of whether it is reasonable *tout court* to \emptyset . Your having a legal right to walk naked through your house does not imply that it is reasonable for you to do so. You might after all catch cold.

Epistemic rights and legal rights are in fact the main representatives of the two major realms of rights, and these realms are divided by this asymmetry. Epistemic rights form one domain in the larger realm of ‘attitudinal rights’ – rights regarding judgment-sensitive attitudes (Scanlon 1998: 22–24). The other domain in this realm of attitudinal rights is the domain of affective rights. Examples of affective rights are the right to *be proud* of what one has done, or the right to *feel uneasy* about the latest proposal. Legal rights, on the other hand, form one domain in the realm of ‘rights of conduct’. The realm of rights of conduct includes the domains of legal rights, moral rights and customary rights. The asymmetry we have found between epistemic and legal rights holds between these two realms more generally. For all attitudinal (epistemic, affective) rights, having a right to \emptyset makes it reasonable for one to \emptyset . The same is true for no rights of conduct (moral, legal and customary rights).

The difference between these two realms can be seen in the fact that there are in the realm of conduct, but not in the realm of attitudes, ‘rights to do wrong’. When we say that the white separatist has a right to post fliers that will foment racial hatred, we are affirming only that he has a legal right to post these fliers – that he has no conclusive legal reason not to post them. We do not thereby assert that it is reasonable for the separatist to post the fliers. Indeed, we likely believe that the separatist has very strong moral reasons *not* to post the fliers: that it is unreasonable for him to do so. Similarly a father may begin counselling his daughter by saying that as an adult she has the right to date any man she likes. But the father may go on to lay out customary, prudential, and even aesthetic reasons for the daughter not to continue with her current beau. Legal reasons alone do not determine the reasonableness of what the daughter has a legal right to do. In contrast,

there are in the epistemic domain no analogous ‘rights to believe wrongly’. With respect to attitudes like beliefs, the reasons within the domain of the right exhaust the reasons that bear on the reasonableness of holding that attitude.²

The summary below shows that while the asymmetry regarding reasonableness divides the rights in the two realms, assertions of all of these rights imply ‘conclusive reason’ assertions with the distinctive structure noted at the outset.

For all attitudinal rights:

- (1a) ‘A has an X right to \emptyset ’ implies ‘A has no conclusive X reason not to \emptyset ’ and ‘It is reasonable for A to \emptyset ’;
- (1b) ‘A has no X right to \emptyset ’ implies ‘A has conclusive X reason not to \emptyset ’ and ‘It is not reasonable for A to \emptyset ’ (where ‘X’ is ‘epistemic,’ or ‘affective’ and \emptyset -ing is a judgment-sensitive attitude within that domain).³

For one type of right of conduct (i.e. Hohfeldian privileges⁴):

- (2a) ‘A has a Y right to \emptyset ’ implies ‘A has no conclusive Y reason not to \emptyset ’ but not ‘It is reasonable for A to \emptyset ’;
- (2b) ‘A has no Y right to \emptyset ’ implies ‘A has conclusive Y reason not to \emptyset ’ but not ‘It is not reasonable for A to \emptyset ’ (where ‘Y’ is ‘moral,’ ‘legal,’ or ‘customary’ and \emptyset -ing is a type of conduct within that domain).

We have gone some way towards showing that all assertions of rights are assertions about conclusive reasons. What needs to be shown next is that this thesis also holds for the rights of conduct not discussed above. That is a job for another day.⁵

² The examples in this paragraph derive from Waldron 1993: 63–87.

³ For (1b) it may be helpful to recall from above that A may have conclusive epistemic reason not to believe that p because A’s evidence against p clearly outweighs his evidence for p ; and for (1a) to recall that A may have no conclusive reason not to believe that p because it is not the case that A’s evidence against p clearly outweighs his evidence for p . In the first case it is not reasonable for A to believe that p , while in the second case it is reasonable for A to believe that p . Thanks to Chris Hookway for emphasizing the importance of the links between stronger evidence, conclusive reasons, and reasonableness.

⁴ This second set of formulae must be limited to capture only Hohfeldian privileges because other types of rights of conduct (e.g., Hohfeldian powers) can also be indicated by the form ‘A has a right to \emptyset ’.

⁵ Many thanks for written comments to David Enoch, Steven Gross, Richard Holton, Chris Hookway, Rosanna Keefe, Simon Keller, Glen Newey, David Owens, Jonathan Riley, Thomas Pogge, Jennifer Saul, Seana Shiffrin and Hillel Steiner. This writing of

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