DOWNLOAD PDF THE ANALYSIS OF RIGHTS LEIF WENAR

Chapter 1 : Leif Wenar â€“ The Conversation

The analysis of rights. About us. Editorial team.

Arthur Ripstein , professor of law and philosophy at U. We are just beginning to understand how to make sense of rights outside of such contexts. The account is non-reductive; the concept of right has its clearest application as a node in a system of roles. I think Wenar is correct to focus on the right-role connection, and to work from it to an account of less central cases. In this brief comment, I want to raise a question and make a proposal. Rather than treating constructed personae as a special kind of kinds, I will suggest treating all talk about rights bearers as appealing to constructed personae. Nonetheless, he correctly notes that we suppose that the end is still constitutive. However, the correct understanding that follows from the idea of the constitutive end is that the end is a formal feature of the role. I wonder, however, whether putting this in terms of desires is an unnecessary detour in the account, and a potentially misleading one at that. When Interest theorists are rigorous, and freeze the concept into hedonist or objective list meaning, the concept then becomes unsuitable for analyzing rights outside those of a limited, if growing, set of natural-kind right-holders. This may seem like a minor point of emphasis, and it may well be. However, I draw attention to it in the context of explicit roles because Wenar deploys the same apparatus in characterizing cases in which no role applies in any straightforward way. I want to suggest that the introduction of desires introduces a potential ambiguity in those cases. By beginning with institutional roles, Wenar frames his proposal in a way that guarantees that the nature of the role in question will be seamlessly integrated with both the system of rules and its characteristic ends. Think here of the goalie, whose constitutive activity does not exist apart from the rules in which it is situated. Of course, there are people who stop other people from getting spherical objects into various locations. To say that is also to note that the status of goalie within a game does not carry over outside of the game. Explaining the modern understanding of human rights requires an expansion of the role-based analysis. Wenar proposes that we think of rights bearers in terms of the desires characteristic of their kind. If we ask what human beings have reason to want, we seem to be pushed towards the thought that normative questions about rights are questions about what each human beings has reason to want, rather than about what sort of roles right bearers occupy in relation to each other. Yet the modern understanding of rights might just as well be understood in terms of what James Q. Those rights are now thought of as standard rights of human beings, and the journals are filled with discussion of both their grounding and their limits. By focusing on the characteristic role, modern human rights can be understood in terms of the role-based analysis, so the attempt to treat roles as a special case of kinds in an unnecessary detour. My thought, then, is that roles are always available. From this perspective, the normative questions about rights are themselves questions about membership in a system of right-bearers. I described this as coming close to focusing on roles, because although there is nothing unfamiliar about a temporarily incapacitated or artificial role-bearer depending on others to act on its behalf. It may be that the approach I am advancing requires the desires be stipulated, but, if what I say above about the relevant concept of desire, that will be true even in the paradigmatic cases; the relevant concept of desire is necessarily role-dependent. Indeed, it makes perfect sense to describe the standard private law of rights of property ownership and contractual performance in terms of constructed persona, because they set out a role within a network of broader private arrangements. It only requires that personae are constructed in the weaker sense that the role of promisee or property owner can only be specified in terms of the relationships in which an occupier of that role stand to others. So, too, with the broader class of human rights: Further human rights are usefully thought of as things that are required in order for human beings to properly fulfill those roles. Needless to say, there is much disagreement about exactly what those roles entail, how they relate to each other, and what is required if they are to be properly fulfilled. But as Wenar points out, the theory of the nature of rights should identify the subject matter of dispute, not resolve those disputes.

Chapter 2 : The Analysis of Rights - Research Portal, King's College, London

Wenar, L , The Analysis of Rights. in The Legacy of H.L.A. Hart: Legal, Political and Moral Philosophy. Oxford University Press, Oxford, pp.

Sabrina Martin Candidate Number: His solution is practical and principled: The problem is that although his solution is practical, it is not economically or politically feasible in that it is not something countries, as they are, would readily adopt. Yet, if Wenar has solid moral grounds for making his argument, we must then determine if the corresponding moral burden is sufficient to compensate for the resulting economic burdens. In other words, although the economic consequences are not ideal, that concern could be overridden by a substantial moral claim. I argue that moral benefits are not enough under his plan, and this is largely due to his over- emphasis of property rights and under-emphasis of the economic and political problems associated with the resource curse, such as its impediment to growth and detrimental effects on women. Then my analysis is divided into two parts. The first is a feasibility assessment based on simple economic principles, where I conclude that there are numerous economic drawbacks to his solution. In the second part, I weigh these detriments against the benefits, and conclude that his solution is altogether insufficient for bringing about a cure to the resource curse. Immediately, one might object on two grounds to my proposition of weighing moral against economic considerations. First, one might object from an economic standpoint that comparing economic considerations to moral ones is like comparing apples to oranges; the economic situation need not correlate with the moral one. Alternatively one might object to my claim on the more philosophical grounds that the two cannot be separated; economic concerns should presuppose Candidate Number: My response to both objections is the same: Diplomats, policy makers, and even consumers must frequently deliberate the costs of principles. If we are to do practical philosophy whose purpose is to make a real-world difference, then our moral principles must take real-world considerations into account. For example, the Kimberley Process, for certifying diamonds, was one such trade off where the moral considerations were deemed to outweigh established economic principles. That is, the Kimberley Process was deemed not to be compatible with the General Agreement on Tariffs and Trade GATT ,1 but the World Trade Organization WTO granted a waiver because the deliberating parties decided that moral principle of diamonds not being used to fund war was of greater concern than international trade regulations. The Resource Curse The resource curse is a term economists give the situation in which less developed countries LDCs remain economically poor despite income from an abundance of natural resources, because the country fails to grow, and in worst-case scenarios, the natural resource income actually reduces growth. It is the exportation of the valuable natural resources that generate international exchange revenue, which is then sold to importers to buy imported goods. So initially, natural resources are more valuable to developing countries than manufacturing, which means that it is incredibly difficult for countries to develop because they are locked into resource exportation and cannot pursue other ways of developing their economy. GV Wenar begins by arguing that the primary reason the resource curse is of moral concern to the developed world is not that it violates a principle of distributive justice or that we are getting rich by exploiting the plights of African nations, as Charles Beitz and Thomas Pogge have suggested. Resource-cursed countries are often plagued by authoritarian regimes and civil conflict. Although none of the above is a necessary condition of another, Wenar obscures his argument a bit, because his argument assumes that resource-cursed countries also have authoritarian regimes. In a democratic country, the natural resources would not be considered stolen. Furthermore, the dictators can rely on the income from exporting these goods and therefore do not have to rely on taxation, meaning they are free from accountability to their citizens. Getting to the moral crux of his argument, Wenar says that the dictators are only half of the problem; the other half is that we buy the exported, stolen goods. Thus, the resource curse, for Wenar, is not as much an economic issue of growth as it is a legal issue of property rights. The resource curse results fromâ€¦a failure to enforce property rights. GV that property without some sort of authorization. Beitz, however, argues that resources unlike natural talents are not constitutive of the self, and the people who simply happen to find the resources on their land do not have a prima facie claim to them. Therefore, ownership of natural resources

needs justification, and he goes on to use this as an argument in favor of global distributive justice. It is rather the challenge that generally faces cosmopolitans: Therefore, Wenar is quite right to take international norms as they are in writing a proposal aimed at a truly achievable solution to the problem. In support of his claim that the people of a country own their natural resources, Wenar cites examples of international treatises that endorse this idea: The Kimberley Process, although its main purpose is to prevent the sale of diamonds from funding dictators, also has the by-product of further enshrining the principle of national natural resource ownership into international code. In other words, on this scheme, countries are responsible for the natural resources diamonds found on their soil. GV a more theoretical proposal might object to national ownership of resources, in presenting a real- world solution, Wenar is right to operate within existing legal frameworks. Thus we turn to the way in which Wenar proposes to fix the sale of stolen goods in the international market. He proposes that legal standards currently in place in the U. To do this he proposes a two tiered system. First, certain minimum conditions must be met for it to be possible for the people to authorize the sale of their natural resources, either by requesting, agreeing, or tacitly consenting that the goods be sold. Since the organization has published Freedom in the World, an annual evaluation of political Candidate Number: This is the principled part of the argument: The idea is that if a country like the U. So let us imagine that American oil companies continue to be barred from buying Sudanese oil. The correct response on a property rights approach is for the U. The survey uses indicators drawn from the Universal Declaration of Human Rights to rate each country in two broad categories: The Freedom House report assigns each country a rating from 1 best to 7 worst on civil liberties and on political rights. An overwhelming and justified fear of repression characterizes these societies. States and territories in this group may also be marked by extreme violence or warlord rule that dominates political power in the absence of an authoritative, functioning central government. Wenar largely redefines the resource curse to be about the moral principle property rights and consent rather than about the economic principle of growth. Though Wenar does acknowledge early on that not all countries with oppressive governments fall prey to the resource curse Eritrea, for example , he makes no mention of it again, and gives us no standard apart from Freedom House to determine which countries should be subject to his policy. The money to fill the trust will be raised from tariffs on Chinese imports as they enter the United States. The money in this Clean Hands Trust will be held for the people of Sudan until the minimal conditions in that country are met. At that point, the money in the trust will be turned over to the Sudanese people. The first two objections are to the consequences of the implementation of the Clean Trade Act, and the second two are related to the implementation of the Clean Trade Tariff. Thus, after the Clean Trade Act is enacted and the U. While it is not completely unfeasible to imagine that the American or French, English, or German economy could handle the effects of an increase in oil prices, the likelihood of the voters approving a cause with this effect is not high. The development of alternative energy sources would decrease the intensity of oil prices rising, making it easier for the governments and voters to absorb the shocks; unfortunately, nothing is currently in place on a large enough scale to provide for this. Figure 1 16 Wenar, p. Even if this is the case, it means demand for oil goes up in these countries, which also leads to an increase in price. GV The second point is in many ways the opposite of the first. This will drive the price down. This means China and other RDAEs who desperately need oil, will not only be able to buy the oil, but will be able to buy the oil well below the price they were paying when the U. Furthermore, the more countries that stop trading, the cheaper the oil will be for the RDAEs. Ultimately, this will have the opposite of the desired effect. Figure 2 Next, Wenar assumes we will not stop trading with China, even though many of the goods we buy will be produced with stolen oil. Economists are usually wary of tariffs for numerous reasons, but two are relevant to this paper: I will consider each in turn. GV See Figure 3. Further, if the country is economically powerful enough as are the countries that would be imposing the tariffs , the instigation of a tariff distorts the entire world market, causing a net loss to the world economy. Tariffs tend to have complicated effects for both the importing and exporting countries that are unnecessary to discuss here at length. It seems incredibly unlikely that China would simply let the U. China could simply stop buying U. Thus, we have seen that both the Clean Trade Act and Tariff would have extremely negative economic repercussions for all parties, and will actually cause an increase of trade in stolen goods with RDAEs. Still, I have argued, that the moral concerns of buying stolen

property might outweigh 20 For a thorough analysis see Krugman and Obstfeld, pp. GV the economic detriments. This tradeoff evaluation can be made because of the validity of the claim that we are buying stolen goods. That is, we are actively participating in a morally objectionable act by buying stolen goods, and therefore have a moral responsibility for reparations of some sort. What is not obvious, however, is that adopting an uncompromising principled stance on the moral status of property rights is the way to fulfill that moral obligation. It is to this moral analysis that we now turn. Although he espouses a broadly deontological position that buying stolen property is wrong, he also seems concerned with the benefits that his policies will eventually have for the people increased political rights , which looks more like a consequentialist ethic. The deontological view rather seems like an argument from the moral purity that liberal democracies will gain by no longer trading in stolen goods. While this might be enough for philosophers, it seems extremely far-fetched to assume it will convince policy makers with the economic detriments being so grave and the benefit analysis being practically nonexistent. Wenar argues that the payoff comes as more countries stop trading: Additionally, once the Clean Hands Trust money is given back to the countries, 24 Collier, p. GV Wenar does not make it clear how this money will benefit the citizens or how it is any different than government aid, which he asserts, quite rightly, is insufficient for remedying the resource curse. Trade, for example, can be detrimental to developing countries when it prevents them from growing other areas of the economy. The argument goes that if these countries could simply break into labor-intensive services or manufacturing, it would create jobs, help them grow in international markets, and generally create a net gain for the economy. This problem is made worse in resource-cursed countries because of the problem of Dutch Disease, which, recall, is when other sectors of the economy cannot grow because resources are the most valuable area of the economy because they produce the most foreign exchange. Essentially they are prevented from diversifying. Algeria, Angola, Gabon, Nigeria, and Oman there is a strong tendency for occupations to be segregated by gender. Jobs in resource-cursed countries tend to be labor-intensive and thus a vast majority of these jobs are held 25 Aid tends to be ineffective because it is money given from a more affluent government to a poorer, and usually less-well-run, government. GV only by men. This reduces the number of jobs available to women, which in turn it reduces their wages, and their ability to connect with one another and consequently organize politically. Thus, as Michael Ross argues, the resource curse has wider implications than originally thought. Not only is it economically detrimental, it also has severe social and political ramifications for women. The failure of women to join the nonagricultural labor forceâ€¦leads to higher fertility rates, less education for girls, and less female influence within the family. It also has far-reaching political consequences:

Chapter 3 : Analysis of Rights - Oxford Scholarship

The Nature of Claim-Rights Leif Wenar This is a new analysis of rights, particularly of the paradigm: the claim-right. The new analysis makes better sense of rights than the leading alternatives do.

And as mentioned above these atomic incidents also bond together in characteristic ways to form complex rights. The privilege on this first level entitles you to use your computer. The claim correlates to a duty in every other person not to use your computer. Also on the second order, your immunity prevents others from altering your first-order claim over your computer. Your immunity, that is, prevents others from waiving, annulling, or transferring your claim over your computer. The four incidents together constitute a significant portion of your property right. Of course all of these incidents are qualified: These qualifications to the incidents carve the contours of your property right, but they do not affect its basic shape. There may also be more incidents associated with ownership than shown in the figure above. A naval captain has an active privilege-right to walk the decks and an active power-right to order that the ship set sail. A player in a chess tournament has a passive claim-right that his opponent not distract him, and a professor has a passive immunity-right that her university not fire her for publishing unpopular views. The holder of a negative right is entitled to non-interference, while the holder of a positive right is entitled to provision of some good or service. A right against assault is a classic example of a negative right, while a right to welfare assistance is a prototypical positive right Narveson Since both negative and positive rights are passive rights, some rights are neither negative nor positive. Privileges and powers cannot be negative rights; and privileges, powers, and immunities cannot be positive rights. The privilege- right to enter a building, and the power- right to enter into a binding agreement, are neither negative nor positive. It is sometimes said that negative rights are easier to satisfy than positive rights. However, when it comes to the enforcement of rights, this difference disappears. Moreover, the point is often made that the moral urgency of securing positive rights may be just as great as the moral urgency of securing negative rights Shue The Will Theory and the Interest Theory 2. However, some diagrams of Hohfeldian incidents that we could construct do not correspond to any right. Rights are only those collections of Hohfeldian incidents that have a certain function or perhaps certain functions. To take an analogy: The question of the function of rights is the question of what rights do for those who hold them. Before discussing the two major positions on this issue, we can survey some statements that theorists have made that may appear to be describing which Hohfeldian incidents are rights: Rights tell us what the bearer is at liberty to do. He is claiming that the other has a duty not to interfere. Through history many have asserted, for example, that God has the right to command man; yet presumably no one asserting such a right would maintain that society ought to defend God in the possession of anything. On Mill see also Hart , â€” To take an example from the scholarly literature, it is not uncommon to encounter a general statement that all rights are, or at least include, claim-rights see, e. The statement that rights are claims is prescriptive for, not descriptive of, usage. Each theory presents itself as capturing an ordinary understanding of what rights do for those who hold them. Which theory offers the better account of the functions of rights has been the subject of spirited dispute, literally for ages. In Hohfeldian terms, will theorists assert that every right includes a Hohfeldian power over a claim. An owner has a right, according to the interest theorist, not because owners have choices, but because the ownership makes owners better off. A promisee has a right because promisees have some interest in the performance of the promise, or alternatively some interest in being able to form voluntary bonds with others. Your rights, the interest theorist says, are the Hohfeldian incidents you have that are good for you. The contest between will-based and interest-based theories of the function of rights has been waged for hundreds of years. Each theory has stronger and weaker points as an account of what rights do for rightholders. The will theory captures the powerful link between rights and normative control. To have a right is to have the ability to determine what others may and may not do, and so to exercise authority over a certain domain of affairs. The resonant connection between rights and authority the authority to control what others may do is for will theorists a matter of definition. Within the will theory there can be no such thing as an unwaivable right: Yet intuitively it would appear that unwaivable rights are some of the most important rights

that we have: Moreover, since the will theorist holds that all rights confer sovereignty, she cannot acknowledge any rights in beings incapable of exercising sovereignty. Within the will theory it is impossible for incompetents like infants, animals, and comatose adults to have rights. Yet we ordinarily would not doubt that these incompetents can have rights, for example the right not to be tortured MacCormick , â€" Will theories also have difficulties explaining bare privilege-rights such as in the Hobbesian state of nature , which are not rights of authority over others. The interest theory is more capacious than the will theory. It can accept as rights both unwaivable rights the possession of which may be good for their holders and the rights of incompetents who have interests that rights can protect. The interest theory also taps into the deeply plausible connection between holding rights and being better off. However, the interest theory is also misaligned with any ordinary understanding of rights. We commonly accept that people can have interests in x without having a right to x; and contrariwise that people can have a right to x without having interests sufficient to explain this. In the second category are many of the rights of office-holders and role-bearers Jones , 31â€"32; Wenar b. Yet there appear to be many rights for which the interests of the putative right-holder are not sufficient to hold other person s to be under a duty. For example, Raz himself allows that the interest of a journalist in protecting his sources is not itself sufficient reason to hold others to be under the corresponding duty Raz , , â€"8. Nor does this difficulty only affect the rights of office-holders like journalists; Raz admits that weighty rights such as the rights of free expression and freedom of contract are not justified solely by the interests of the individual citizens who hold them Raz a, 30â€"43, Or again, parents may have the right to receive child benefit payments from the state, but here only the interests of the children, and not the interests of the parents, could be sufficient to hold the state to be under a duty. Will theorists and interest theorists have developed their positions with increasing technical sophistication. The issues that divide the two camps are clearly defined, and the debates between them are often intense. Kramer, Simmonds, and Steiner , Van Duffel a, Kramer The seemingly interminable debate between these two major theories has driven some to conclude that the debate itself rests on the mistaken premise that there is a single concept of a right for which these theories provide rival analyses Van Duffel b, Hayward The deadlock has encouraged other theorists to develop alternative positions on the function of rights. Like the will theory, these demand theories center on the agency of the right-holder. They may, however, have more difficulties in explaining power-rights. Other recent analyses of what rights do for rightholders are varied. Scanlon , defends the position that rights are constraints on the discretion of individuals or institutions to act. Recently, theorists have attempted to make progress on the question of functionality by scrutinizing the claim-right in particular, and by shifting attention onto the corresponding duty. The promisor, for example, owes a duty of performance to the promisee. After all, not all duties are directed to specific others: The violation of any duty may be wrong it may be wrong not to give to charity , but the violation of a directed duty is a wronging of the being to whom the duty is owed: And unlike a mere wrong, the wronging of some being calls, ceteris paribus, for apology and compensation. Cruft further argues that the violation of any duty owed to a being is disrespectful of that being. The question is what could possibly account for the extra significance of the duties that have direction. The History of the Language of Rights Intellectual historians have tangled over the origins of rights. Yet insofar as it is really the emergence of the concept of a right that is at issue, the answer lies beyond the competence of the intellectual historian and within the domain of the anthropologist. Even the most primitive social order must include rules specifying that certain individuals or groups have special permission to perform certain actions. Moreover, even the most rudimentary human communities must have rules specifying that some are entitled to tell others what they must do. Such rules ascribe rights. The genesis of the concept of a right was simultaneous with reflective awareness of such social norms. The more productive characterization of the debate within intellectual history concerns when a word or phrase appeared that has a meaning close to the meaning of our modern word. The Roman jurist Ulpian, for instance, held that justice means rendering each his right ius. The ancient authors often used words imprecisely, and smeared their meanings across and beyond the Hohfeldian categories. The intellectual historians themselves have occasionally congested the discussion by taking different features of rights as definitive of the modern concept. Moreover, the scholarly debate has sometimes accepted over-optimistic assumptions about the sharpness of conceptual boundaries. Nevertheless, two broad trends in

the scholarly discussions are clear. Donohue now argues that ius is used in a subjective sense throughout the works of the classical Roman jurists in the first century BCE to the third century CE. The second and related trend has been to establish that terms referring to active rights what we would call privilege-rights and power-rights predate terms referring to passive rights what we would call claim-rights and immunity-rights. It appears that the earliest medieval debates using recognizably modern rights-language, for instance, concerned topics such as whether the pope has a power- right to rule an earthly empire, and whether the poor have a privilege- right to take what they need from the surplus of the rich. Rights and Freedom Most rights entitle their holders to freedom in some sense; indeed holding a right can entail that one is free in one or more of a variety of senses. In the most general terms, the active incidentsâ€”the privilege and the powerâ€”entitle their holders to freedom to act in certain ways. The passive incidentsâ€”the claim and the immunityâ€—often entitle their holders to freedom from undesirable actions or states. We can be more specific. A government employee with a security clearance, for instance, has a privilege-right that makes him free to read classified documents. One can be free in this non-forbidden way without having the physical ability to do what one is free to do. You may be free to join the march, even when both your knees are sprained. The actions you are free to do in this sense may or may not be possible for you, but at least they are not disallowed. Someone who has a pair of privilege rightsâ€”no duty to perform the action, no duty not to perform the actionâ€—is free in an additional sense of having discretion over whether to perform the action or not. You you may be free to join the march, or not, as you like. This dual non-forbiddenness again does not imply physical ability.

Chapter 4 : Rights (Stanford Encyclopedia of Philosophy)

The issue of resource rights within a particular territory has been addressed by many political philosophers, among who are Leif Wenar and Cara Nine. Both philosophers try to determine and argue to whom this right over resources justly belongs. Wenar argues that resources within a particular.

We encounter assertions of rights as we encounter sounds: Making sense of this profusion of assertions requires that we class rights together by common attributes. Rights-assertions can be categorized, for example, according to: Who is alleged to have the right: What actions or states or objects the asserted right pertains to: Rights of free expression, to pass judgment; rights of privacy, to remain silent; property rights, bodily rights. Why the rightholder allegedly has the right: Moral rights are grounded in moral reasons, Legal Rights derive from the laws of the society, customary rights exist by local convention. The inalienable right to life, the forfeitable right to liberty, and the waivable right that a promise be kept. Many of these categories have sub-categories. For instance, natural rights are the sub-class of moral rights that humans have because of their nature. Or again, the rights of political speech are a subclass of the rights of free expression. The study of particular rights is primarily an investigation into how such categories and sub-categories overlap. There has been much discussion, for example, of whether human rights are natural rights, whether The Right to Privacy is a legal right, and whether the legal right to life is a forfeitable right. For the central jurisprudential debate over the relation between legal and moral rights, see legal positivism, natural law theories, and The Nature of Law. The Analysis of Rights Categorization sorts the profusion of rights assertions. To understand the exact meaning of any assertion of a right, we need to understand more precisely how rights are constructed and what they do. An analysis of rights has two parts: The Hohfeldian system for describing the form of rights is widely accepted, although there are scholarly quarrels about its details. Which theory gives the best account of the function of rights has been much more contentious; we turn to that debate in section 3. The Hohfeldian Analytical System Analysis reveals that most familiar rights, such as the right to free expression or the right of private property, have a complex internal structure. Such rights are ordered arrangements of basic components, much in the same way that most molecules are ordered arrangements of chemical elements. This right is a privilege: A has a privilege to? To say that you have a right to pick up the shell is to say that you have no duty not to pick it up. You will not be violating any duty not to pick up the shell should you decide to do so. Similarly your right to sit in an empty seat in the cinema, and your right to paint your bedroom red, are also privileges. Privilege-rights mark out what their bearer has no duty not to do. Similarly, a license to drive, to perform surgery, to kill endows its holder with a privilege to engage in the licensed activity. Others have given these two terms different definitions e. This right is a claim: A has a claim that B? The employee has a claim that the employer pays him his wages, which means that the employer has a duty to the employee to pay those wages. As seen in the definition and the example, every claim-right correlates to a duty in at least one duty-bearer. Not all claim-rights are created by voluntary actions like signing a contract; and not all claim-rights correspond to duties in just one agent. Indeed the primary rules for all physical actions are properly analyzed as privileges and claims. Were we to know all the privileges and claims that there are regarding physical actions, we would know for every possible physical action whether that action was permitted, required or forbidden. The Hohfeldian power is the incident that enables agents to alter primary rules: Similarly, a promisor exercises a power-right to create in the promisee a claim that the promisor will perform a certain action. Or again, a neighbor waives his claim that you not enter his property by inviting you into his home. Ordering, promising, waiving, sentencing, buying, selling, and abandoning are all examples of acts by which a rightholder exercises a power to change his own Hohfeldian incidents or those of another. An admiral, for example, has the power-right to relieve a captain of her power-right to command a ship. Rights to alter the authority of others are, as we will see, definitive of all developed legal and political systems. The United States Congress lacks the ability within the Constitution to impose upon American citizens a duty to kneel daily before a cross. Since the Congress lacks a power, the citizens have an immunity. Similarly, witnesses in court have a right not to be ordered to incriminate themselves, and civil servants have a right not

to be dismissed after a new government comes to power. In order to fill out the tables he added some further terminology. And as mentioned above these atomic incidents also bond together in characteristic ways to form complex rights. A naval captain has an active privilege-right to walk the decks and an active power-right to order that the ship set sail. A player in a chess tournament has a passive claim-right that his opponent not distract him, and a professor has a passive immunity-right that her university not fire her for publishing unpopular views. The holder of a negative right is entitled to non-interference, while the holder of a positive right is entitled to provision of some good or service. A right against assault is a classic example of a negative right, while a right to welfare assistance is a prototypical positive right Narveson Since both negative and positive rights are passive rights, some rights are neither negative nor positive. Privileges and powers cannot be negative rights; and privileges, powers, and immunities cannot be positive rights. The privilege- right to enter a building, and the power- right to enter into a binding agreement, are neither negative nor positive. It is sometimes said that negative rights are easier to satisfy than positive rights. However, when it comes to the enforcement of rights, this difference disappears. Moreover, the point is often made that the moral urgency of securing positive rights may be just as great as the moral urgency of securing negative rights Shue

Chapter 5 : Leif Wenar | Blain Neufeld - calendrierdelascience.com

Leif Wenar - - Analysis 63 (2) 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.

Wenar points 44 5 and Science, University of Wisconsin â€" Milwaukee, out that the principle that the resources of a country 45 6 Milwaukee, WI, USA belong to the people of that country is widely accepted 46 and embedded in international law e. From to , he was ent economic systems, including systems of both private 50 9 a member of the Department of Philosophy at the and public ownership of resources. However, the regimes 51 10 University of Sheffield. Wenar, trade in stolen goods. With 65 23 suffer from lack of economic and political development the respect to countries that continue to purchase stolen 66 24 greater its endowment of natural resources. Though not all resources, Wenar proposes that tariffs be applied to 67 25 countries with abundant natural resources suffer from this imports from such countries the total revenue of which 68 26 curse e. He also 80 38 Wenar include Nigeria, Sierra Leone, the Democratic argues that it is compatible with such diverse political 81 39 Republic of Congo, and Equatorial Guinea. Consequently, it is upshot of the analysis advanced by Milanovic and Wenar 84 a proposal for advancing global justice, according to is, first, that Rawls is unjustified in extending the demo- 85 Wenar, that is both realistic and ecumenical in character. However, 95 national self-interest in their foreign relations. This assumption is that private dona- 98 those subject to them. Wenar maintains that the only tions to international nongovernment organizations 99 source of political ideas acceptable to all reasonable per- NGOs , or government funds given to such organiza- sons and societies in the modern world, and thus the only tions, straightforwardly alleviate suffering. Consequently, a cosmopolitan account mation, we cannot know what obligations we have toward of international justice cannot satisfy the requirement of the distant poor. Rather, he argues that we need to justice an account whose principles all refer to individ- improve our knowledge of the relative success and failure uals is impossible. Since territory is property, and rates of different kinds of aid programs. Obtaining such a system of property can be stable only if the rules that information requires, inter alia, greater standardization govern it the system of entitlements, distribution, and so and impartiality in the assessment of aid programs. Aid programs administered by respon- integrity of the person cannot be specified without refer- sible non-corrupt and non-authoritarian local govern- ence to their respective territorial affiliations, that is, the ments, Wenar notes, have been successful precisely nation-states of which they are citizens. Instead, liberal societies theory of global justice, and consideration of what duties do not go to war with each other because their political individuals have to alleviate global poverty. In addition to systems and political cultures typically are interconnected his work on these topics, Wenar also has engaged with the through lobbyists, media, civil society, and so forth. The views of other important theorists of global justice, such as Comp. Polit Philos Econ nature of rights. J Polit Philos

Chapter 6 : Leif Wenar, The analysis of rights - PhilPapers

The analysis here is not meant to apply directly to epistemic rights (rights to believe, infer, doubt), to affective rights (rights to feel), or to conative rights (rights to want). I proposed some initial contrasts between rights of conduct and these attitudinal rights in " Legal Rights and Epistemic Rights," Analysis 63 ():

Life and Work Rawls was born and raised in Baltimore, Maryland. His father was a prominent lawyer, his mother a chapter president of the League of Women Voters. Hart, Isaiah Berlin, and Stuart Hampshire. His first professorial appointments were at Cornell and MIT. In Rawls joined the faculty at Harvard, where he taught for more than thirty years. The exceptions were two wars. As a college student Rawls wrote an intensely religious senior thesis BI and had considered studying for the priesthood. Yet Rawls lost his Christian faith as an infantryman in World War II on seeing the capriciousness of death in combat and learning of the horrors of the Holocaust. Rawls first set out justice as fairness in systematic detail in his book, A Theory of Justice. Rawls continued to rework justice as fairness throughout his life, restating the theory in Political Liberalism , The Law of Peoples , and Justice as Fairness Those interested in the evolution of justice as fairness from onwards should consult Freeman and Weithman The first role is practical: A second role of political philosophy is to help citizens to orient themselves within their own social world. Philosophy can meditate on what it is to be a member of a certain society, and how the nature and history of that society can be understood from a broader perspective. A third role is to probe the limits of practicable political possibility. Political philosophy must describe workable political arrangements that can gain support from real people. Yet within these limits, philosophy can be utopian: Given men as they are, as Rousseau said, philosophy imagines how laws might be. A fourth role of political philosophy is reconciliation: Philosophy can show that human life is not simply domination and cruelty, prejudice, folly and corruption; but that at least in some ways it is better that it has become as it is. Rawls viewed his own work as a practical contribution to resolving the long-standing tension in democratic thought between liberty and equality, and to limning the limits of civic and of international toleration. He offers the members of his own society a way of understanding themselves as free and equal citizens within a fair democratic polity, and describes a hopeful vision of a stably just constitutional democracy doing its part within a peaceful international community. To individuals who are frustrated that their fellow citizens and fellow humans do not see the whole truth as they do, Rawls offers the reconciling thought that this diversity of worldviews results from, and can support, a social order with greater freedom for all. Rawls has no universal principle: Rawls confines his theorizing to the political domain, and within this domain he holds that the correct principles for each sub-domain depend on its particular agents and constraints. Rawls covers the domain of the political by addressing its sub-domains in sequence. The first sub-domain that he addresses is a self-contained democratic society reproducing itself across generations. Once principles are in place for such a society, Rawls moves to a second sub-domain: Rawls suggests though he does not show that his sequence of theories could extend to cover further sub-domains, such as human interactions with animals. Universal coverage will have been achieved once this sequence is complete, each sub-domain having received the principles appropriate to it. Ideal theory makes two types of idealizing assumptions about its subject matter. First, ideal theory assumes that all actors citizens or societies are generally willing to comply with whatever principles are chosen. Ideal theory thus idealizes away the possibility of law-breaking, either by individuals crime or societies aggressive war. Second, ideal theory assumes reasonably favorable social conditions, wherein citizens and societies are able to abide by principles of political cooperation. Citizens are not so driven by hunger, for example, that their capacity for moral reasoning is overwhelmed; nor are nations struggling to overcome famine or the failure of their states. Completing ideal theory first, Rawls says, yields a systematic understanding of how to reform our non-ideal world, and fixes a vision mentioned above of what is the best that can be hoped for. Once ideal theory is completed for a political sub-domain, non-ideal theory can be set out by reference to the ideal. For instance, once we find ideal principles for citizens who can be productive members of society over a complete life, we will be better able to frame non-ideal principles for providing health care to citizens with serious illnesses or

disabilities. Similarly, once we understand the ideal principles of international relations, we will better see how the international community should act toward failed states, as well as toward aggressive states that threaten the peace. Were one to attain reflective equilibrium, the justification of each belief would follow from all beliefs relating in these networks of mutual support and explanation. Though perfect reflective equilibrium is unattainable, we can use the method of reflective equilibrium to get closer to it and so increase the justifiability of our beliefs. Doing this inevitably brings out conflicts where, for example, a specific judgment clashes with a more general conviction, or where an abstract principle cannot accommodate a particular kind of case. One proceeds by revising these beliefs as necessary, striving always to increase the coherence of the whole. Carrying through this process of mutual adjustment brings one closer to narrow reflective equilibrium: Because of its emphasis on coherence, reflective equilibrium is often contrasted with foundationalism as an account of justified belief. Within foundationalist approaches, some subset of beliefs is considered to be unrevisable, thereby serving as a foundation on which all other beliefs are to be based. Reflective equilibrium privileges no such subset of beliefs: Metaphysical beliefs about free will or personal identity might be relevant, as could epistemological beliefs about how we come to know what moral facts there are. However, while this is correct in principle, Rawls holds that in practice productive moral and political theorizing will proceed to a large extent independent of metaphysics and epistemology. Indeed, as a methodological presumption Rawls reverses the traditional order of priority. Progress in metaethics will derive from progress in substantive moral and political theorizing, instead of as often assumed vice versa CP, â€" Legitimacy and Stability within a Liberal Society In a free society, citizens will have disparate worldviews. They will believe in different religions or none at all; they will have differing conceptions of right and wrong; they will divide on the value of lifestyles and of forms of interpersonal relationships. Democratic citizens will have contrary commitments, yet within any country there can only be one law. The law must either establish a national church, or not; women must either have equal rights, or not; abortion and gay marriage must either be permissible under the constitution, or not; the economy must be set up in one way or another. Rawls holds that the need to impose a unified law on a diverse citizenry raises two fundamental challenges. The first is the challenge of legitimacy: How can it be legitimate to coerce all citizens to follow just one law, given that citizens will inevitably hold quite different worldviews? The second challenge is the challenge of stability, which looks at political power from the receiving end. Why would a citizen willingly obey the law if it is imposed on her by a collective body many of whose members have beliefs and values quite dissimilar to her own? Yet unless most citizens willingly obey the law, no social order can be stable for long. Rawls answers these challenges of legitimacy and stability with his theory of political liberalism. Political liberalism answers the conceptually prior questions of legitimacy and stability, so fixing the context and starting points for justice as fairness. The Liberal Principle of Legitimacy In a democracy, political power is always the power of the people as a collective body. In light of the diversity within a democracy, what would it mean for citizens legitimately to exercise coercive political power over one another? Our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason. PL, According to this principle, political power may only be used in ways that all citizens can reasonably be expected to endorse. The use of political power must fulfill a criterion of reciprocity: The liberal principle of legitimacy intensifies the challenge of legitimacy: What constitution could all citizens reasonably be expected to endorse? They are willing to propose and abide by mutually acceptable rules, given the assurance that others will also do so. They will also honor these rules, even when this means sacrificing their own particular interests. Reasonable citizens want, in short, to belong to a society where political power is legitimately used. Each reasonable citizen has her own view about God and life, right and wrong, good and bad. Each has, that is, what Rawls calls her own comprehensive doctrine. Yet because reasonable citizens are reasonable, they are unwilling to impose their own comprehensive doctrines on others who are also willing to search for mutually agreeable rules. Though each may believe that she knows the truth about the best way to live, none is willing to force other reasonable citizens to live according to her beliefs, even if she belongs to a majority that has the power to enforce those beliefs on everyone. One reason that

reasonable citizens are so tolerant, Rawls says, is that they accept a certain explanation for the diversity of worldviews in their society. Reasonable citizens accept the burdens of judgment. The deepest questions of religion, philosophy, and morality are very difficult even for conscientious people to think through. People will answer these questions in different ways because of their own particular life experiences their upbringing, class, occupation, and so on. Reasonable citizens understand that these deep issues are ones on which people of good will can disagree, and so will be unwilling to impose their own worldviews on those who have reached conclusions different than their own. This capacity gives hope that the diversity of worldviews in a democratic society may represent not merely pluralism, but reasonable pluralism. Rawls hopes, that is, that the religious, moral, and philosophical doctrines that citizens accept will themselves endorse toleration and accept the essentials of a democratic regime. In the religious sphere for example a reasonable pluralism might contain a reasonable Catholicism, a reasonable interpretation of Islam, a reasonable atheism, and so on. Being reasonable, none of these doctrines will advocate the use of coercive political power to impose conformity on those with different beliefs. The possibility of reasonable pluralism softens but does not solve the challenge of legitimacy: For even in a society of reasonable pluralism, it would be unreasonable to expect everyone to endorse, say, a reasonable Catholicism as the basis for a constitutional settlement. Reasonable Muslims or atheists cannot be expected to endorse Catholicism as setting the basic terms for social life. Nor, of course, can Catholics be expected to accept Islam or atheism as the fundamental basis of law. No comprehensive doctrine can be accepted by all reasonable citizens, and so no comprehensive doctrine can serve as the basis for the legitimate use of coercive political power. Since justification is addressed to others, it proceeds from what is, or can be, held in common; and so we begin from shared fundamental ideas implicit in the public political culture in the hope of developing from them a political conception that can gain free and reasoned agreement in judgment. PL, â€”01 There is only one source of fundamental ideas that can serve as a focal point for all reasonable citizens of a liberal society. These fundamental ideas from the public political culture can be crafted into a political conception of justice. A political conception is not derived from any particular comprehensive doctrine, nor is it a compromise among the worldviews that happen to exist in society at the moment. Rather a political conception is freestanding: Reasonable citizens, who want to cooperate with one another on mutually acceptable terms, will see that a freestanding political conception generated from ideas in the public political culture is the only basis for cooperation that all citizens can reasonably be expected to endorse. The use of coercive political power guided by the principles of a political conception of justice will therefore be legitimate. The three most fundamental ideas that Rawls finds in the public political culture of a democratic society are that citizens are free and equal, and that society should be a fair system of cooperation.

Chapter 7 : Outline of rights - Wikipedia

Keywords: rights, Interest Theory, Will Theory, Hohfeldian analysis Oxford Scholarship Online requires a subscription or purchase to access the full text of books within the service. Public users can however freely search the site and view the abstracts and keywords for each book and chapter.

Wenar does not shy away from the horrific consequences of current trade practices, nor from the philosophical arguments needed to show that this trade rests on ethically indefensible assumptions. Yet instead of leaving us to despair, he offers realistic ways of bringing about change that would make the world a better and fairer place. Or that your purchases of oil are supporting injustice and oppression, just as British purchases of sugar once supported the enslavement of Africans? Leif Wenar has written the indispensable guide, combining politics, economics, and ethics to tell us just how and why we are all involved, and what we ought to do to make the world a better place. Health, Wealth, and the Origins of Inequality "This book is one of those rare manifestos that awaken people to a pressing ethical issue by changing the way they see the world. Whether or not its recommendations are practicable today, Blood Oil is a fantastically stimulating read: Most importantly the book derives practical proposals on how such objectives are to be achieved. Our comfort is purchased by collusion with regimes that are responsible for high levels of human misery, injustice and bigotry. This courageous and forceful book challenges us to make the hard decision that might change this worsening situation. It is a serious and urgent appeal to the conscience of the West. But Blood Oil also lays out, in careful detail, a clean trade strategy that will bring our complicity to an end and help poor people recover sovereignty over their resources. It is also a delight to read: Political Ethics in an Age of Terror "This is a long-awaited study of power in the contemporary world, in oil markets and the often corrupted power-plays that they engender. Leif Wenar is a philosopher with profound understanding of the daily, practical world. His big book should become required reading. It should stir us away from the coldly comforting idea that some peoples will always be poor and tyrannically governed. This is a fine marriage of moral seriousness and institutional imagination. Writing in an engaging, conversational style, Wenar trenchantly and provocatively explores one of the great moral challenges of our time. Although the benefits from development and global connectedness-in which we are all inescapably complicit-have been huge, some of those benefits have flowed to people who have systematically made the lives of others desperate and miserable. Wenar shows that much of this oil has been stolen from the citizens who rightfully own it, nests this issue in the historic struggle for the right of self-determination, and suggests a way to rectify this injustice that is surprisingly practical. This book is not merely a major scholarly achievement; it is both politically urgent and compulsively readable. Its making will probably involve oil, minerals or metals. Some of those resources will have come from a country whose government steals from and oppresses its citizens. This is a nasty, if familiar, thought. He reveals a horrible truth: For those who think that the only tie between oil and U. For that alone, it is well worth reading. His order will launch a devastating attack on any country. Sanctions will descend at his pen stroke. Alliances will be his to offer.

Chapter 8 : Epistemic rights and legal rights | Analysis | Oxford Academic

An analysis of rights has two parts: a description of the internal structure of rights (their form), and a description of what rights do for those who hold them.

Chapter 9 : New Essays on the Nature of Rights: Mark McBride: Hart Publishing

Leif Wenar holds the Chair of Philosophy & Law at King's College London. After earning his Bachelor's degree from Stanford, he went to Harvard to study with John Rawls, and wrote his doctoral.