

How Rights Work
With Specific Consideration for Rights in a Pandemic

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How Rights Work

Table of Contents

Abstract	3
How Rights Work With Specific Consideration for Rights in a Pandemic	4
What are Rights.....	4
Rights and Anti-vaxxers During a Pandemic.....	5
A Question of Trust.....	6
How Do We Tell Who is being Responsible?	7
Conclusions.....	8
References	9

How Rights Work

Abstract

Rights are defined in terms of community moral obligations. There are two kinds of obligations: to not interfere, or to assist. These define so-called negative and positive rights respectively.

Western communities support individual freedoms within prescribed boundary conditions. We agree to not interfere in some individual activities, and agree to assist in others as long as no harms are identified with these behaviours.

In a pandemic it is in the public interest for the community to set obligations for all members to assist in public health and safety. All individuals have a right to this assistance – to not be unduly exposed to a potentially lethal contagion. This is defined as a right to a safe community.

We also support a right to decide how we meet this obligation – to participate in public programs or to develop and practice private programs that meet a defined health and safety standard.

Anti-vaxxers are people who choose to opt out of public programs. That said, their moral obligations to the community do not magically disappear. They must meet the public health and safety standard with their own personal program that meets the standard. Anything less would constitute a kind of harm and they would forfeit their right to decide.

A further complication is a common human systems failure called the Tragedy of the Commons – when a few selfish people ruin community interests. We know that we solve this problem not by denying rights to decide, but with severe penalties for the consequences of selfish behaviours.

Since rights are all about community obligations, the onus is on the community to clearly define health and safety standards, and provide mechanisms to both identify and ensure compliance.

That is how we balance community interests with individual choices.

How Rights Work

How Rights Work With Specific Consideration for Rights in a Pandemic

It is evident during the current Covid-19 Pandemic that many people do not understand what rights are and how they work. It seems that we teach people that they have several kinds of rights but we don't explain what this actually means. This is evident in the current pandemic with people refusing to get a vaccine that could save their life or prevent the further spread of the virus. Such people are called anti-vaxxers.

This paper argues that rights are moral obligations that we, as a society, agree to accept. They are really about what obligations we have to our community, and what obligations the community has towards the individual. A proper understanding of what this means leads to a proper balance between the two perspectives.

What are Rights.

Rights are moral obligations that members of a community agree to accept. There are two kinds of rights based on two kinds of obligations that a community could accept: To leave the individual to their own considerations, or to assist others. We call the first "negative rights" – rights of non-interference, and the second "positive rights" – rights of assistance. Let's consider the example that you have a negative right to a pen.

What this means is that you can do what you want with your pen without interference from others. That is, everyone else accepts an obligation to not interfere with you having or using your pen.

Notice that this right is not absolute. There are always boundary conditions – usually defined in terms of some kind of harm to others. For example, you would not get to use your pen as a dagger to go around stabbing people. You could not write hateful missives, or articles that incite violence that would lead to harm. If you do those things the public would no longer accept an obligation to not interfere. They would feel the reverse – an obligation to interfere, and stop the harmful activity. We say that you forfeit your right. You only get to use your pen without interference as long as your activities with the pen are within the prescribed boundary conditions. All rights come with boundary conditions, so there are no absolute rights by definition.

But there are also obligations to assist others. For example, if we accept that you have a right to food, others are obligated to assist you in getting food. Notice again, that this right is not absolute. We cannot set an obligation that you would harm yourself or others in providing such assistance. For example, you cannot be obligated to steal food from others, or give up everything you own to assist others. You are obligated to do what you can. Again, there are no absolute rights by definition.

What both of these kinds of rights have in common is that they are both about the obligations that we, as a community, are willing to accept – to not interfere or to assist. Rights are not about the individual; they are about the community. That is why individuals cannot confer rights, only communities can.

How Rights Work

We should also be aware that our language about rights is confusing. We tend to refer to negative rights as “individual rights” or “Civil Liberties”, and positive rights as “moral” or “social” obligations. But we can now see that they are both really public moral obligations. They are about what obligations we accept as a community.

Rights and Anti-vaxxers During a Pandemic.

During a declared public crisis such as a declaration that we are in a pandemic with the spread of a potentially lethal contagion, what are our rights, and how do these work?

First, I want to point out that in our current Western Society we accept many negative rights to the extent that we enshrine these in our constitution as a Charter of Rights and Freedoms, or Bill Of Rights, or similar constitutional legal framework.

One of these rights is the right to decide over our own mind and body. We accept a public obligation to not interfere with such decisions. I support such an obligation. So where does that leave us when individuals who are granted such a right choose to opt out of public programs?

First, we need to have a complete model of our rights. The issue is compounded situation.

You have the right to decide what you put on or into your body. However, you also have an obligation to assist your community in matters of public health and safety. These other moral obligations do not magically disappear because we grant you the right to decide. The issue becomes, how do we balance our individual rights with all of our moral and social obligations? A failure to affect a proper balance could result in some harm and you forfeiting your right to decide.

At the same time, your choice is really about whether you will participate in public health and safety programs. Anti-vaxxers have clearly indicated that they choose to opt out of such programs. That said, their obligation to community health and safety does not magically disappear.

This is a clear case where increases in freedom come with increases in responsibility. If you choose to opt out of public health programs, you are on the hook to develop your own personal health and safety program that meets public health standards, and on your own dollar (so to speak). Failure to do this could put your decision outside of the boundary conditions that then deems your actions to be harmful, and you forfeit your right.

There are three issues in this balancing act:

1. Are you taking your moral responsibilities seriously. Have you developed a personal program to support community health and safety, and are you sticking to it religiously?
2. While you have the right to decide what you put into your body, everyone else also has rights – in this case the right to go into a public space without being unduly endangered of exposure to a potentially lethal contagion. What are you doing to guarantee and respect that other

How Rights Work

people's rights to be safe are being respected to the same degree that that you demand that your right to decide be respected and guaranteed? Again, a question of balance.

3. There are many people who are at extreme risk from this particular contagion. People with chronic lung or immune system medical problems are at a particularly high risk. The early onslaught of this disease mostly killed or seriously harmed people with these kinds of pre-existing medical conditions. Such people are, therefore, rightfully terrified of this contagion. For many, contracting this disease could be fatal or lead to long term medical distress. Antivaxxer behavior could, in this context, be considered a kind of terrorism. What practices have you as an individual put in place to ensure that your behaviour is not perceived as an act of terror? How are you identifying and protecting the most vulnerable in our community?

A failure to strike such balances suggest that we as a community should not accept an obligation to not interfere with the anti-vaxxer decision unless these conditions are readily apparent in these individual's behaviours. What could this mean and how could we do this without violating our agreed preference to respect individual rights?

A Question of Trust.

The question at this point is, "How can we trust that an individual who has already demonstrated that they do not take public health and safety seriously will, on their own initiative, put their own healthy and safety program in place and follow it?" This leads us to another consideration in this matter.

Many people think that this problem is new. It is not. We have been studying this problem for the last 300 or 400 years. It is called *The Tragedy of the Commons*. Simply put, the Tragedy of the Commons is when a few selfish people ruin things for everyone else. We have all experienced this in some form or other.

In this case, a few people that refuse to participate in public health and safety programs ruin it for everyone else in the community. We keep going through wave after wave after wave of contagion because we never really get to a critical point where the spread of the disease is relatively contained. The math is simple. These people are the reason this contagion keeps going round and round. How then do we stop this cycle and still respect individual rights?

The consensus regarding how to stop the Tragedy of the Commons is not to forfeit individual rights to decide, but rather focus on the harmful consequences of such behaviours. The consensus is that we put exorbitant penalties on selfish behaviours. The penalties need to be so severe that even the most self-serving selfish individual will stop to consider that the cost of selfish behaviour outways any benefit think they might otherwise obtain. They still have the right to decide, but now must consider the costs of their choices.

Of course, they could decide to opt out of public programs and institute their own personal program that meets public health and safety standards, and that demonstrates that they are respecting others rights to the same extent that they demand their rights to be respected. But given the question of trust there is a further onus on such individuals to prove that they are meeting these conditions. Again, with increased freedom comes increased responsibilities.

How Rights Work

A further problem for Anti-vaxxer though, is that they are also being subjected to their own version of the Tragedy of the Commons. A few irresponsible anti-vaxxers that don't meet these requirements then ruin it for the others. Trust is never really secured, and the need to up the severity of the penalties increases.

There is the further problem of balancing individual and public liabilities. For example, a business owner is responsible for the health and safety of their employees, and visitors to their facilities. Safety shoes, and glasses, restricted entry and other public safety standards provide guidelines to ensure health and safety as much as possible. If the company follows such public health and safety standards, and there is an accident, the community shares the liabilities. However, if the owner opts out of having or enforcing public safety standards, they become personally liable. Again, with increased freedom comes increased responsibilities and liabilities.

Putting penalties on selfish behaviours is really about increasing the liabilities associated with selfish behaviour. For example, if you fail to put a proper personal health and safety program in place, or fail to follow it, you are personally liable for the consequences. That is what exorbitant penalties are intended to do – increase personal liabilities for those who fail to take their moral obligations to the community seriously.

How Do We Tell Who is being Responsible?

How do we tell who is taking their moral responsibilities seriously or not? Since rights are really public obligations, it is clear that those who represent the public interest must provide several things:

1. They need to provide a clearly defined standard of public health and safety. This is to clearly define the boundary conditions for the various rights and freedoms. The standard does not have to presuppose public programs. The standard needs to be crafted in such a way that it could be met through public or private programs.
2. They need to craft public programs that can reach the whole public with clear mechanisms for participation and proof of participation. Such programs need to be simple, and readily available to those who choose to participate.
3. They need to provide a mechanism(s) to identify who can be trusted, and who might be posing a health and safety risk to themselves and others. That is, who is actually meeting the standard and who isn't. This mechanism needs to apply to both public and private programs.
4. They need to provide a clear statement of the liabilities for any of failure of compliance with the defined health and safety standard. What are the penalties for non-compliance? Given the lessons learned from the Tragedy of the Commons, these liabilities need to be severe.
5. They need to provide appropriate policing or other measures to ensure compliance, and catch those who fail to comply. This may involve legislation or other formal regulations that serve the public interest with regard to compliance.

How Rights Work

Conclusions

While we refer to some rights as individual rights, it is clear that all rights are really public obligations. They are about community acceptance of obligations to individuals, and individual obligations to the community. The objective is to balance these in a way that satisfies our desire to grant individual freedoms while maintaining a safe and healthy community.

The issue for Anti-vaxxers (and also for anti-maskers), is that when they choose to opt out of public health and safety programs – which we grant them the right to do - they take on additional responsibilities and liabilities. Often these decisions are made in the absence of complete information. Public standards are not clear, mechanisms to identify compliance are not in place, and mechanisms to ensure compliance are weak or non-existent.

Since rights are really about public community obligations, the onus is on the community and its representatives to ensure that the standards are clear, and appropriate compliance mechanisms are in place and working. If the community meets this standard, we can balance individual freedoms with community obligations, and avoid the Tragedy of the Commons.

These measures characterize how we protect individual rights and balancing these against community interests in matters of health and safety.

How Rights Work

References

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