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JOINT POLITICAL RIGHTS AND OBLIGATIONS

abstract

In this paper it is argued that: (1) political rights and obligations are a species of institutional (moral) right and obligation (respectively) and are not, therefore, natural rights and obligation; (2) political rights and obligations in a given polity are not simply aggregates of individual rights and obligations rather they are joint political rights and obligations; (3) the exercise of these joint rights, and the concomitant discharging of these joint obligations, is (i) a collective good in itself; (ii) productive of the collective good of legitimate government, and (iii) productive of the collective good of the coordination and regulation of other social institutions (government is a meta-institution), and (4) the procedure of voting in a democratic polity is a joint institutional mechanism – understood as a particular construction out of the notion of a joint action – and a specific expression of the joint right and obligation to engage in political participation.

keywords

joint action, joint rights, joint obligations, political rights, political obligations

Political rights, such as the right to vote in elections and the right to stand for political office, are also moral rights. Other more general moral rights, such as the right to freedom of speech and to freedom of association, are also critical in political settings. While all of these rights, and many others, tend to be lumped together under the heading of human rights, there are good reasons to insist on some distinctions and, in particular, the distinction between natural rights and institutional rights.¹ Political rights are, I suggest, a species of institutional right and are not, therefore, natural rights (in my favored sense of this latter term – see section 1). Likewise political obligations are institutional rather than natural obligations.² Moreover, as I argue in section 3, political rights and obligations in a given polity are not simply aggregates of individual rights and obligations. Rather they are best understood as *joint* political rights and obligations. As elaborated in section 2, a joint right is an individual right which each possessor has, jointly – and, therefore, interdependently – with others. As such, it is not merely an aggregate of individual rights. Likewise a joint obligation is not simply an aggregate of individual obligations. Moreover, the exercise of these joint rights, and the concomitant discharging of these joint obligations, is a collective good in itself. It also produces the collective good of *legitimate* government and the collective good of the coordination and regulation of other social institutions. In the fourth and final section I provide an analysis of voting in a democratic polity. I do so in terms of my notion of a joint institutional mechanism. I argue that the joint institutional mechanism of voting is a specific expression of the joint right and obligation to engage in political participation.

- 1. Institutional rights and duties** Some moral rights, such as the right to life, the right not to be tortured, the right to (clean) air and water and the right to freedom of bodily movement are logically prior to social institutions.³ These *natural* rights are ones we possess simply by virtue of properties we have qua human beings, such as the capacity to suffer physical pain and to enjoy conscious life. Moreover, some natural rights are needs-based rights. For example, the right to clean air and water is based on biological need. However, many moral right, duties, values, principles and

1 There is a vast philosophical literature on human rights, moral rights, and so on. For a useful general discussion see Nickel (2007).

2 There is a vast philosophical literature on political rights, principles and obligations. For one influential discussion see Simmons (1979).

3 See, for example, Griffin (2008). Griffin's distinction between rights per se and practicalities is salient here.

so on are *not* logically prior to social institutions. Consider in this connection the moral right to vote, the moral right to a fair trial, the right to buy and sell land, and the moral right to a paid job. The first of these rights presupposes institutions of government of a certain kind (democratic government), the second, criminal justice institutions of a certain kind (e.g. courts of law that adjudicate alleged crimes), and the third and fourth, economic institutions of a certain kind. Let us refer to such institution-dependent moral rights as “institutional moral rights” (as opposed to natural moral rights) (Miller 2010, ch. 2). Since political rights and, for that matter, political obligations presuppose political institutions, they are a species of institutional right and of institutional obligation, respectively.

Evidently, institutional moral rights depend in part on rights-generating properties possessed by human beings *qua* human beings, but also in part on membership of a community or of a morally legitimate institution, or occupancy of a morally legitimate institutional role.

Such institutional moral rights and duties include ones that are: (a) derived at least in part from collective goods and (b) constitutive of specific institutional roles, e.g. the rights and duties of a fire officer. They also include moral rights and duties that attach to all members of a community because they are dependent on institutions in which all members of the community participate, e.g. the duty to obey the law of the land, the duty to contribute to one’s country’s national defense in time of war, the right to vote, the right of access to paid employment in a particular economy, the right to own land in a particular territory, the right to freely buy and sell goods in a particular economy.

By the lights of my favored teleological account of social institutions (Miller 2010, ch. 2), these institutional moral rights and duties are institutionally relative in the following sense. Even if they are in part based on an institutionally prior human right (e.g. a basic human need, the natural right to freedom) their precise content, strength, context of application (e.g. jurisdiction) and so on can only be determined by reference to the institutional arrangements in which they exist and, specifically, in the light of their contribution to the collective good(s) provided by those institutional arrangements. So, for example, a property regime, if it is to be morally acceptable, must not only reward the producers of goods (e.g. by protecting the ownership rights of the producers of goods to the goods that they produce) it must also ensure that consumers are benefited and not harmed (e.g. producers are required to meet health and safety standards). More particularly, a property regime, if it is to be morally acceptable, must satisfy the requirements of institutionally prior human rights; specifically, it must ensure that the needs-based rights of consumers are fulfilled (e.g. producers are required to compete under conditions of fair competition, or are otherwise constrained, to ensure that their products are available at prices the needy can afford).

In respect of institutional moral rights and duties we need to distinguish between *general* institutional moral rights and duties, on the one hand, and *special* institutional moral rights and duties on the other (Miller 2010, ch. 2). General institutional moral rights/duties depend in part on properties we possess as human beings and in part on membership of a community with social institutions of the relevant kind. General institutional moral rights/duties attach to all members of a given nation-state because these moral rights/duties are dependent on, and in part constitutive of, institutions in which all members participate. Examples of general institutional moral rights are the right to vote in a given polity and the obligation to obey the law in a given jurisdiction. Some general institutional moral rights transcend the nation-state by virtue of being in part constitutive of trans-national social institutions. Examples of such rights/duties are rights to buy/sell in international financial and other markets.

Special institutional moral rights/duties are in part constitutive of particular institutional roles, e.g. a police officer’s right to arrest. As such, they derive in part from the collective good which is the *raison d’être* for the institution in question. Thus a police officer’s right

to arrest derives in part from the institutional purpose served by police organizations of crime reduction; police have a right to arrest offenders as a precursor to their prosecution, punishment and/or deterrence. Moreover, these special moral rights and duties do not necessarily attach to ordinary persons. For example, the moral right to perform open heart surgery attaches to surgeons but not to ordinary citizens or other non-surgeons. Finally, we need to make a distinction between: (a) institutional moral rights; and (b) institutional rights that are not moral rights. The right to vote and the right to stand for office embody the human right to autonomy in the institutional setting of the state; hence to make a law to exclude certain people from having a vote or standing for office, as happened in apartheid South Africa, is to violate a moral right. But the right to make the next move in a game of chess, or to move a pawn one space forward, but not (say) three spaces sideways, is entirely dependent on the rules of chess; if the rules were different (e.g., each player must make two consecutive moves, pawns can move sideways) then the rights that players have would be entirely different. In other words, these rights that chess players have are *mere* institutional rights; they depend entirely on the rules of the 'institution' of the game of chess. Likewise, (legally enshrined) parking rights, such as reserved spaces and one hour parking spaces in universities are *mere* institutional rights, as opposed to institutional *moral* rights.

2. Joint moral rights and obligations

Thus far we have distinguished between natural and institutional moral rights, and between *general* and *special* institutional moral rights. Political rights and obligations of the relevant kind are *moral* rights and obligations (respectively). Moreover, they are also institutional (moral) rights and obligations since they are logically dependent on the social institution of government. Further, some of these political rights and obligations are general institutional moral rights and some are special institutional rights and obligations. For example, the right to vote is a general institutional moral right. However, the rights and duties that attach to political office holders (e.g. prime ministers) are special institutional moral rights. So far so good. However, there is an important conceptual category of moral rights and obligations that now needs to be introduced, namely, joint moral rights and obligations. It will turn out that political rights and obligations are in large part *joint* (moral and institutional) rights and obligations (Miller 2010, ch. 12).

Joint rights (and obligations) stand in contrast with individual rights (and obligations).⁴ An individual right is one possessed wholly in virtue of properties one has as an individual. For instance, the right to life is an individual right since life is something one possesses independently of its possession by others. By contrast, a joint right is a right which each individual has, jointly – and, therefore, interdependently – with its possession by others. For example, if A, B and C author a book together then each has a right to be named as an author jointly with the others (and no-one else has this right).

Consider a couple of types of example from the political sphere: rights of exclusion and rights of secession. Most nation-states hold that exclusion is a legal, indeed, a moral right. Accordingly, exclusion from Australian territory is a joint right of all Australian citizens (but not of non-Australians). Exclusion from Italian territory is a joint right of all Italians (but not of Australians and other non-Italians). Secession, supposing it to be a right of some social groups, is a joint right. Many hold that the Kurds have a right to secede from Turkey. If so, this right is a joint right: a joint right of all Kurds in Turkey (but not of non-Kurds).

Joint rights (and, likewise, joint obligations) need to be distinguished from both *merely* individual rights that attach to individual human persons, as well as from (alleged) rights that

⁴ Miller (2001, ch. 7). For an earlier discussion of joint rights see Miller (1999).

attach to social groups and other collective entities *per se*. For, on the one hand, joint rights are *relational* individual rights as opposed to non-relational individual rights. As we saw above, the right to life is and individual but not a joint right. On the other hand, joint rights are not rights that attach to collective entities such as do the legal rights of a corporation.

Moreover, joint rights are not merely conditional individual rights. A conditional right (in this sense) is one that a person has conditionally on the actions of someone else. For example, A might promise B that A will pay B \$X on condition that B wins the race that B is about to compete in. Here B's right to \$X is a conditional right: a right to \$X conditional on B winning the race. However, it is not a joint right.

Further, in accordance with the above-mentioned teleological account of social institutions, joint rights in my target sense are rights to collective goods (or parts or aspects thereof) (Miller 2010, chs. 2 and 10). For example, each citizen in some well-ordered jurisdiction has a right to security jointly with his or her fellow citizens. Here security is a collective good in the economists' sense; the good is non-rival and non-excludable.⁵ Again, members of a community might each have a right, jointly with the others, to graze their cows on a particular parcel of pasture land. Here, the quantum of grass consumed by the cows of each individual member of the community is a part or share of the collective good. However, as tragedy of the commons scenarios illustrate, this good is a rival good.

Let us now consider in more detail this notion of a collective *good*. Here the related notion of a collective *end* is crucial. A collective end is an end that is achieved by two or more agents acting together, i.e. performing a *joint* action. Each of the two or more individual participating agents has the collective end in question, and each intentionally performs a singular action in order to contribute to the realization of this collective end. So a collective end is an individual end that each agent is aiming at. I note that ends are not necessarily intentions, and collective ends, in particular, are not, in general, intended. Importantly, some collective ends are also collective *goods*. Thus, the workers in a farm jointly act to produce and harvest a much-needed food crop such as, say, wheat. The wheat crop is a collective good in my sense.

Some joint actions which produce collective goods generate joint rights to the good jointly produced. Here John Locke's idea that mixing one's labor with pre-existing material can generate moral rights is salient. Just as an individual may well have a moral right of possession of a good which that individual produces by his or her own labor, so two or more individuals may well have a joint right of possession to a good which they jointly produce by means of their labor. The individuals in question may have a joint right to use or consume that good or, indeed, to transfer it to a third party in return for a benefit. Consider a team of artisans who make furniture, for example, or a team of scientists who invent a strain of wheat that is resistant to a prevalent disease.

Some joint rights are not, or not entirely, based on joint production of a collective good. Joint moral rights can be based on promises or agreements. For example, the joint ownership rights to a house might be conferred on a newly married couple as a wedding gift by one of their wealthy parents.

Some joint rights are based at least in part on membership of a social group. Consider, for example, the joint right of the citizenry of some polity to establish (e.g. by legislation) a particular system of land rights (e.g. a freehold system or a system of common ownership) within part of the territory of the social group. I refer to such joint rights – joint rights based at least

⁵ The definitions of these terms are problematic. However, roughly speaking, a non-rival good is one such that its enjoyment by one does not reduce the amount available for enjoyment by others, and a non-excludable good is one such if it is available to some then others cannot be effectively excluded from enjoying it.

in part on membership of social group or institution – as *collective rights*. The above-mentioned secession rights of members of the Kurdish social group and exclusion rights of Australian citizens, supposing they exist, are collective rights in this sense. That is, they are a particular species of joint right; they are joint rights based in part on membership of a social group. I note that some such collective rights are what is often referred to as group rights or minority rights.⁶ For example, the fishing, hunting and minority voting rights enjoyed by indigenous people in countries such as Australia and Canada are minority rights. That is, they are joint rights held by members of the indigenous community in question, but not by members of the larger community; moreover, they are joint rights possessed in part by membership of the minority group in question.

Having provided ourselves with serviceable accounts of the notions of institutional moral rights and joint moral rights, let us now turn to a consideration of joint political rights and obligations, bearing in mind my claim that such rights are simultaneously moral, institutional and joint rights.

3. Joint political rights and obligations

The rights of political participation include the rights to vote, to stand for political office, to engage in public political discussion, to organize a political party, and of political assembly. Concomitant with political rights there are political obligations. These include the obligation to accept the results of legitimate political processes, to obey the lawful directives of duly elected leaders, and to comply with the laws enacted by the duly elected legislature.

My claim, then, is that these political rights and obligations are not simply institutional moral rights and obligations, but also *joint* moral rights and obligations. So in general terms the moral rights and obligations of individual citizens to participate in the political decision-making process in the polity of which they are members by deliberating, voting, standing for office and so on, and by accepting the results of the legitimate political processes in that polity, (e.g. by complying with laws enacted by the duly elected legislature), are joint moral rights and obligations.

If this is correct then the moral legitimacy of the institution of government is not based on the exercise of a set of mere *aggregates* of individual human rights and the concomitant discharging of a set of mere *aggregates* of individual obligations, but rather on the exercise of a set of *joint* moral rights and the concomitant discharging of a set of *joint* moral obligations. Let me explain.

Representative government in liberal democracies is a social institution. By the lights of the teleological theory of social institutions, it therefore has a constitutive collective end or, at least, collective ends, and these collective ends are to secure a number of collective goods. Perhaps the first and most obvious of these is the provision of legitimate leadership, i.e. of an institutionally and morally legitimate government. Naturally, it is a constitutive functional feature of any social institution of government that it provides political leadership, i.e. government. However, a distinctive feature of the institution of representative government, in particular, is that this leadership is morally legitimate.⁷

A further (related) collective good secured (especially) by contemporary institutions of representative government is the coordination and regulation of other social institutions,

⁶ See, for example, Kymlicka (1995).

⁷ There is a vast philosophical literature on normative theories of political legitimacy. See, for example, Simmons (1979). For a collectivist account that contrasts with Simmons' individualist account and my own relational individualist account see Gilbert (2014, ch. 17). Also, and by contrast with Simmons and myself, Gilbert posits a sui generis notion of commitment which is neither moral nor institutional arising from joint action.

such as the education system, the public health system and the criminal justice system, in a manner that ensures that they realize their (respective) collective ends and, thereby, provide the collective goods that justify their existence. In this respect representative government is a *meta-institution*: an institution concerned with other institutions.⁸

A third collective good provided by representative government is political participation; political participation in the form of the exercise of joint moral rights and the concomitant discharging of joint moral obligations. In this form political participation confers legitimacy on governments. The exercise of the joint right to political participation by the members of the citizenry, (e.g. by voting), is itself a collective end of this institution. As such, it is an end that is realized by the actions of many; not by one person acting alone. Moreover, this collective end is a collective good. For it is a collective end that *consists in* the fulfillment of moral rights – joint moral rights. Accordingly, the exercise of the joint right of political participation is an end in itself; and not merely a means to some further end. That said, it is also the case that the exercise of the joint right of political participation is also a means to other ends, such as the above-mentioned coordination and regulation of other institutions.

This joint moral right to political participation is in turn *in part* based on the prior *natural* individual right of autonomy. So my account of political participation stands within the dominant Enlightenment tradition of John Locke, Immanuel Kant and so on.⁹ It is also based *in part* on membership of the relevant political community. So my account – cast, as it is, in terms of *joint* rights – eschews atomistic accounts of political rights and obligations.¹⁰ In short, the joint moral right to political participation is a *collective right* in the sense adumbrated in section 3 above. Finally, as already noted, the joint right to political participation goes hand in glove with the joint obligation to participate, including by accepting the results of legitimate political processes.

Let me now turn to a specific institutional expression of the joint moral right and obligation to engage in political participation, namely, voting in a democracy. Here the notion of a joint institutional mechanism is crucial.

Elsewhere I have introduced and analyzed the notion of a joint mechanism.¹¹ An example of the use of a joint mechanism is two friends tossing a coin to resolve a dispute as a one-off action. Some such mechanisms are institutionalized, e.g. the practice of tossing a coin to decide who is to bat first in an international game of cricket between England and Australia. Let us refer to these as joint *institutional* mechanisms. I now offer an analysis of joint institutional mechanisms of which the institutional practice of voting in a democracy is a very important example.

Joint institutional mechanisms consist of: (a) a complex of differentiated, but interlocking, intentional actions (the input to the mechanism); (b) the result of the performance of those actions (the output of the mechanism), and (c) the mechanism itself. Here the mechanism itself is to be understood as consisting of an operation on the inputs that yields an output; so strictly speaking inputs and outputs are constituents of the mechanism only in the sense of being placeholders or variables. Thus, the notion of a joint mechanism does not collapse into the notion of a joint action.¹² For in the case of a joint action the individual actions are not

4. Voting and joint institutional mechanisms

8 For the argument for this see Miller (2010, ch. 12).

9 See Griffin (2008) for an attempt to reconstruct an account of human rights in the Enlightenment tradition.

10 See Charles Taylor's essay on atomism (essay 7) in his (1985) *Philosophy of the Human Sciences: Philosophical Papers (Volume 2)*, Cambridge University Press, 1985.

11 *Ibid.* Chapter 1. See also Miller (2001, ch. 2).

12 See, for example, Bratman (2014) and Miller (1992).

inputs upon which an operation is performed; rather they are simply actions directed at a collective end and, as such, are constitutive of the joint action. Accordingly, while joint actions are individuated by their constitutive individual actions, joint mechanisms are individuated by their various operations.

Consider the joint institutional mechanism of voting. Citizen A votes in an election and A does so only if others, B, C, D etc. also vote, and only if there is someone to vote for. So in addition to the actions of voting there are the actions of the candidates, X, Y, Z etc., in standing for political office. That they stand as candidates is (in part) constitutive of the input to the voting mechanism; after all, voters vote *for candidates*. So there are interlocking and differentiated actions (the inputs). Further there is some result of the operation of the mechanism: some candidate, say, Smith is voted in by virtue of having secured the most votes (the output). What of the mechanism itself? A key constitutive feature of this voting mechanism is as follows: to receive the most number of votes *is* to win the election.¹³ Importantly, that Smith, in particular, is voted in is not something aimed at by all of the participants; specifically, those who voted for Jones were (obviously) not aiming at getting Smith elected!

How does joint action figure in this, given that voters who voted for Jones were not participants in the joint action to vote in Smith? Each voter, of course, performs an intentional individual action of voting and believes others are doing likewise. However, being a species of joint action there must be, on my analysis, a collective end which *all* the voters have. Here we need to be careful. Naturally, it is not an end of *all* the voters (and, therefore, not a collective end of all the voters) that Smith is voted in; for a number of voters voted for other candidates, such as Jones. Rather it is only a collective end of those who vote for Smith that he be voted in; each member of this sub-group of voters votes for Smith in the belief (or, at least, hope) that others will also vote for Smith. Since we are assuming Smith did in fact receive the most votes it follows that those who voted for him have realized the collective end of their joint action. Likewise it is a collective end of those who voted for Jones that she be voted in. However, since Jones did not receive sufficient votes to win the election theirs is an unsuccessful joint action. So at the level of sub-groups of voters there may be multiple joint actions, only one of which is successful.

Importantly, there is also a collective end of *all* the voters and *all* the candidates (or at least all those voting and standing for election in good faith). This is the collective end that the one who gets the most votes – whoever that happens to be – is the winner. This is a collective end of all *bona fide* participants in the joint institutional mechanism and reflects the commitment of the participants to the above-mentioned key constitutive feature of the mechanism, i.e. that the candidate with the most votes wins the election. Accordingly, participants in this joint institutional mechanism perform the individual actions of casting a vote and/or standing as a candidate having as a collective end that the one who gets the most votes – whoever that is – wins the election. So voting is a species of joint action and, more specifically, a joint institutional mechanism.

There are, however, two important salient normative features of the joint institutional mechanism of voting in democracies that need to be rendered explicit at this point. These features go hand in glove. Firstly, each has a *moral right* to vote and, in the light of our analysis of the voting mechanism as a *joint* mechanism, this is a *joint institutional and moral right*. As such, it is a right possessed by each interdependently with the others in the service of a collective end which is also a collective good or, at least, a telescoped set of collective goods, namely,

¹³ There are, of course, any number of alternative voting systems in democracies. However, this does not materially affect the analysis on offer here.

political participation (first collective good) in the provision of a legitimate government (second collective good). Secondly, the one who gets the most votes is not simply the winner of the election. For that person is also, by virtue of winning the election, the morally and institutionally legitimate occupant of the political office in question. Indeed, there is a *joint institutional and moral obligation* on the part of all voters – irrespective of which candidate each might have voted for – to accept the election result and, thereby, confirm this legitimacy.¹⁴ So the obligation to accept the result is a moral obligation possessed by each interdependently with the others in the service of a collective end which is also a collective good, or, at least, telescoped set of collective goods, namely (and as is the case with the closely related joint rights), political participation in the provision of a legitimate government.

In this paper I have argued that: (1) political rights and obligations are a species of *institutional* (moral) right and obligation (respectively) and are not, therefore, natural rights and obligation; (2) political rights and obligations in a given polity are not simply aggregates of individual rights and obligations rather they are *joint* political rights and obligations; (3) the exercise of these joint rights, and the concomitant discharging of these joint obligations, is (i) a collective good in itself; (ii) productive of the collective good of *legitimate* government, and (iii) productive of the collective good of the coordination and regulation of other social institutions (government is a *meta-institution*), and (4) the procedure of voting in a democratic polity is a *joint institutional mechanism* and a specific expression of the joint right and obligation to engage in political participation.

5. Conclusion

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¹⁴ This is, of course, subject to various other conditions being met, e.g. that the person is eligible to hold the office in question, the electoral and subsequent processes were not flawed in their operation, and so on.