Rights come in a range of types – moral, legal, political and human – and claims regarding who has a right, and to what, are often disputed. In ‘An Introduction to Modern Political Theory’, Norman Barry stated that rights “…belong to all persons, irrespective of what nation, community, or social practice they may be a member of”\(^1\). The concept of rights first became prominent during the modern intellectual period known as the Age of Enlightenment – a period when the traditional hierarchical political and social orders were violently destroyed and replaced by an order informed on the ideals of freedom and equality. For instance, the French Revolution (1789 - 1799) sparked the issuing of ‘The Declaration of the Rights of Man and of the Citizen’, written by Marquis de Lafayette\(^2\), which, even today, has “influenced and inspired rights-based liberal democracy throughout the world”\(^3\).

In recent years, academic scholars have debated the long-standing divisions between the two prominent theories on rights – the Will theory and the Interest theory. Both theories offer a valuable insight into the fundamental nature, function and meaning of the term ‘rights’.

Traditionally defending the view that rights necessarily involve discretion, or control, over another’s duties, the Will theory, otherwise known as the Choice theory, has been elaborated throughout the second half of the twentieth century by scholars such as H.L.A Hart and Carl Wellman. Will theorists argue that the purpose of rights is to grant the right-holder the freedom to control the duties that others owe to him. Essentially, the purpose of rights is to protect and foster individual autonomy. H.L.A Hart expressed this idea in his

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\(^3\) William A. Edmundson (2004), p.41
work entitled ‘Essays on Bentham: Studies in Jurisprudence and Political Theory’, where he observed, “The individual who has the right is a small-scale sovereign”.

On the other hand, according to the Interest theory, rights exist to serve relevant interests of the right-holder. Otherwise known as the Benefit theory, the Interest theory perpetuates the idea that there is nothing incoherent about the idea of rights which the right-holder does not have the moral power to waive or annul. The Interest theory of rights is an instrumental approach to the justification of rights, in that rights are instrumental in securing human well-being. Thomas Paine, one of the founder-fathers of the United States, expressed the essence of the Interest theory in the following quote, “He acquires a knowledge of his rights by attending justly to his interest”.

When comparing the two theories, it can be acknowledged that both have a descriptive and justificatory dimension. However, the theories offer an opposing account on the function and nature of rights.

Firstly, the descriptive dimension of the Will theory presents the outline of what is considered a ‘right’, and what circumstances need to be achieved in order for the fulfilment of a moral principle to be counted as a ‘right’ in which someone can possess. Will theorists argue “…an idle use of the expression ‘a right’ will confuse the situation with other moral situations where the term ‘a right’ has a specific force”. Furthermore, it can be highlighted that nothing counts as a ‘right’ unless it has an assignable right-holder. The Will theory also has a justificatory dimension, insofar that the autonomy of the individual serves as the justification of the right. Moreover, no-one counts as a right-holder unless they hold the option of enforcing or waiving the duty correlative to the right. This idea was emphasised

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6 Herbert Lionel Adolphus Hart (1955), ‘Are There Any Natural Rights?’, Philosophical Review, Volume 64
in H.L.A Hart’s seminal work entitled ‘Are There Any Natural Rights?’, whereby he argues that “If there are any moral rights at all, it follows that there is at least one natural right; the equal right of all men to be free…”7. The Will theory as a justificatory analysis has come under serious scrutiny in recent years – with many academic scholars, such as Joseph Raz and Neil MacCormick, deeming it an implausible theoretical approach to adopt. Will theorists claim that rights must be under the control of the right-holder, and hence a necessary condition of holding a ‘right’ is having the adequate competence and capacity to waive or annul that right. However, this leaves non-autonomous human beings, whom we necessarily attribute moral rights to, inadequately protected. For instance, Hillel Steiner, in his work ‘An Essay on Rights’, states, “…foetuses, minors, the comatose, the mentally disabled…to say nothing of the members of virtually all known species – must lack all Will Theory rights”8. Essentially, Will theorists argue that non-autonomous human beings lack the sufficient powers of comprehension to appreciate the significance of what they do. In the defence of Will theory, Carl Wellman, in ‘Real Rights’, argues, “…non-autonomous human beings are the beneficiaries of a stringent set of moral duties borne by all members of the community of autonomous agents”9. However, even this claim, which has been critically assessed, can be seen as implausible. For example, Joseph Raz argues, “It is simply false to say that non-autonomous human beings without moral rights are nonetheless beneficiaries of moral duties that accord them just as much moral protection as rights could give them”10. In agreement with Raz, Nicholas Vrousalis, disputes, “It is insensitive to the interests of the unempowerable, whose lives are thereby treated as

7 Herbert Lionel Adolphus Hart (1955), ‘Are There Any Natural Rights?’
10 William A. Edmundson (2004), p.128
not meriting direct normative consideration on grounds of justice”¹¹. The fragilities within the Will theory make it an implausible approach to adopt when attempting to generate a theory to coincide with the modern day interpretation of rights.

As stated, the Interest theory also has a descriptive and justificatory dimension. Conversely, it offers a contrasting account to the function and nature of rights. The descriptive dimension of the Interest theory outlines and authorises debate about interests and their importance. The theory itself does not identify or distinguish among interests. Furthermore, it does not tell us what interests are, or whether all are important enough to be considered duties. James G.S Wilson, in ‘Rights’, states, “…it does not prejudge too much about what rights there are and what kinds of entities can be right-holders…”¹². It can be argued that the Interest theory exists to focus on the function that rights have of protecting the right-holder’s interest, rather than interests generally. It essentially marks the distinction between an objective and subjective right. This can be seen as a plausible theoretical approach to rights. The descriptive dimension of the theory centres on the idea that rights are justified by the interests of the right-holder; that is their “raison d’être”. The justificatory dimension of the Interest theory is that only beings capable of having interests are candidates to be a right-holder. As expressed by Joseph Raz, “…a person may be said to have a right if and only if some aspect of his well-being (some interest of his) is sufficiently important in itself to justify holding some other person or persons to be under a duty”¹³. Of course, one can criticise this section of the Interest theory. The Interest theory itself does not adequately accommodate and respect the rights of others. The kernel of the idea is to further the interests of the right-holder’s; irrespective of everybody else. It can be seen how the Interest theory has been considered a selfish theoretical account of rights. In addition,

some Marxist theorists argue that interest-based rights serve to further facilitate huge gaps in wealth and power. The fact that a certain act will protect the interests of any individual can never provide a generally significant reason in favour of it.

When evaluating the plausibility of the two theories, both the Will and the Interest theory offer compelling arguments in an attempt to better our understanding of rights.

Firstly, the Will theory emphasises the idea that all rights consist in the enjoyment of opportunities for individual choices, and furthermore, that having a right is having an opportunity to make a choice. The distribution of freedom, which the Will theory allows, is an appealing aspect in suggesting that it is a plausible theory to adopt when discussing the function and nature of rights. Jeremy Waldron, in ‘The Right to Private Property’, claims, “The Will theory is essentially connected to a certain distribution of freedom”\(^1\). Also, the Will theory captures the distinctive link between rights and normative control. Will theorists argue to have a right is having the ability to determine what other’s may or may not do. Finally, the Will theory emphasises the power that our ability to make rational choices has. Rights function as a power that the right holder exercises over others. This appealing aspect of the theory makes it a plausible theory to adopt, however, many would argue that holding such power could be considered a destructive element. Yet, the Will theory has many disadvantages, which make it an implausible theoretical approach to adopt. As stated previously, the Will theory inadequately protects non-autonomous. In addition, according to the Will theory, if you have a claim right, then by definition, you also have the power to waive or annul that right. However, the Will theory, as a conceptual analysis, dismisses inalienable rights. This approach seems to offend the idea that this use doesn’t capture what we ordinarily mean by ‘right’ – that this is a devaluing of the idea of

right if it is to say that rights can be divested but not other moral duties. As stated by James G.S Wilson, “…if we are to show that there are no inalienable rights, surely this will require substantive moral arguments, rather than mere stipulation”\textsuperscript{15}.

The Interest theory of rights fits better into our ordinary understanding of rights. Firstly, the theory provides valuable and precise explanations for a wide range of cases that we want to attribute rights to. Many of the central rights we wish to attribute, such as the right to life and the right to liberty, can very plausibly be thought to further the interests of their right-holders. The willingness of the Interest theory to understand and accept kindness and compassion in certain circumstances highlights that it is a plausible theoretical approach. Furthermore, the Interest theory does not prejudge about rights and potential right-holders; the substantial element is that potential right-holders have interests that are worthy of protection, for example, the right to refuse medical treatment. Essentially, the Interest theory offers protection to autonomous and non-autonomous beings. Again, this is an appealing aspect of the theory.

However, the Interest theory does have several limitations. The thesis that all rights protect and further the interests of the right-holders looks narrow. For instance, Hillel Steiner argued, “It seems wrong to say that the right exists to benefit the right holder (the power right that a judge has to pass a sentence, does not seem to have the function of protecting the judge’s interests)”\textsuperscript{16}. Finally, another problem with the Interest theory is that the appeal to human nature in order to establish what is commonly needed to lead a minimally good life, which is one of the Interest theory’s main incentives, has proved incredibly problematic. One could argue that the conditions needed for minimally good life

\textsuperscript{15} James G.S Wilson (2000)
\textsuperscript{16} Hillel Steiner (1994), p.214
are relative to certain requirements such as culture and society. The lack of universality of these requirements limits the appeal of the Interest theory.

Overall, both theories offer a compelling perspective on the debate of rights. The Will theory offers right-holders an opportunity to make a rational choice, however, the limitation of who can hold a right makes the theory an implausible one to adopt. The Interest theory, despite some reservations, fits better into our understanding of rights. The plausible theoretical approach of the Interest theory protects and essential human interests, in an attempt to secure general human well-being.

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**Bibliography/References**


