The Common Good and Rights
A Neo-Communitarian Approach

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The moral value of human rights and liberty is so central to scholars, activists, and citizens in the West that they are taken as more or less self-evident truths. This essay shares this assumption. However, it asks: Do human rights and liberty provide a sufficient moral foundation for a good society? And if not—what must be added? If commitment to the common good is an essential part of our shared moral understandings (or ought to be), how can the commitment to the common good be reconciled with our commitments to human rights and liberty? Part I of the essay outlines the case for including the common good as a central part of our public morality. Part II deals with the issues that arise by combining the commitment to rights with that to the common good.

The Common Good. Unlike the moral claims posed by rights, those posed by the common good are far from self-evident to many in the West. Many libertarians and some liberals hold that each person should rule on the good for herself and that society ought to base its public policies on the aggregation of individual choices. They shun more robustly communal formulations of the good because they fear that

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If such formulations are embraced, the government will be tempted to coerce people to serve them. This would, in turn, diminish individual liberty—the good that, for libertarians and liberals, trumps all others.

In actuality, the common good is not merely the equivalent of an aggregation of all private or personal goods in a society. It connotes those goods that serve all members of a given community and their institutions. As such, it includes goods that serve no identifiable particularistic group as well as goods that serve members of generations not yet born. Contributions to the common good often offer no immediate payout or benefit, making it difficult to predict who will receive such benefits in the long run. Yet members of communities that support the common good invest in it not because it will necessarily or even likely benefit them or their children, but because they consider it a good that ought to be nurtured. What follows is a discussion of three examples of common goods: basic research, national defense, and environmental preservation.

Basic research is widely recognized as a common good, even by economists whose theories tend to favor a libertarian position. Studies show that basic research typically pays off only many decades after it is carried out, so that individuals investing in it cannot expect a reasonable rate of return. It is often quite hard to predict what usages the research will lead, and impossible to predict who will benefit from it.1 Despite these conditions, societies do invest in basic research for the good of the community.

The same principle holds for national security. Unlike the purchase of an alarm system for one’s home, taxes dedicated to defense and homeland security are levied on all citizens, whether they live in high- or low-risk areas, and are pooled together. These funds pay for the defense of the nation as a whole—of its collective institutions and assets above and beyond those of the individual citizens. Although some industries and their shareholders, along with professional soldiers, benefit disproportionately from these investments, the end product of national security still benefits the community as a whole and thus it is a common good.

Protecting the environment, which includes preventing the climate from overheating and developing sustainable energy sources, will only pay off over the long term and then only to unknown, unpredictable beneficiaries. Millions of people paying for these endeavors at present cannot be sure that they will be alive to see the benefit of their contributions. Individuals interested in maximizing their self-interest could gain a much better rate of return on their money if they invested in stocks and bonds, and then used the dividends to purchase air conditioners and sunscreen. The fact, though, is that environmental protection is ever more widely recognized as a common good worth pursuing.

**Community as a Common Good.** Like the common good, the value of community is also far from self-evident in the West. Indeed, some have argued that the term itself is so vague it cannot even be defined. Others argue that community is an idea employed to suppress the disadvantaged
or that it refers to a generally oppressive societal design. In contrast, communitarians hold that community can be clearly defined as a group of individuals that possesses two characteristics. The first is a web of affect-laden relationships which often crisscross and reinforce one another (rather than merely one-on-one or chain-like individual relationships). The second is some commitment to a core of shared values, norms, and meanings, as well as a collective history and identity—in short, a particularistic moral culture. Neo-communitarians hold that community is basically a major common good in itself as well as a major source of other common goods; "basically" because like all goods, community can take on dysfunctional forms, especially when its social bonds, culture, or political structure are oppressive. Hence the special import of balancing the community as a value with commitments to rights.

A significant body of data demonstrates that when communities are weak or absent, people suffer. The absence of sufficient communal bonds causes a person to feel detached and alienated, which leads some individuals to withdraw from society or engage in antisocial behavior. These actions range from abusing drugs and alcohol to joining gangs and militias in a quest for community. Other scholars have noted that modern loneliness makes people neurotic, selfish, or narcissistic. Indeed, some have argued that the mark of the "modern self" is that its development is truncated—indicating the ill effects of deficient connectedness and moral anomie.

Another important facet of communities is their ability to provide informal social controls that reinforce the moral commitments of their members. This helps to make for a largely voluntary social order. The most effective way to reinforce norms of behavior is to build on the fact that people have a strong need for continuous approval from others, especially from those with whom they have affective bonds of attachment, such as members of their community. Neo-communitarians see this persuasive power as a key function of communities, in part because it allows the role of the state and its coercive means to be greatly curtailed and be replaced by the promotion of the common good based on informal social controls that communities provide. In summary, communities are a major source of human flourishing, and should be regarded as a common good as well as contributing to numerous other common goods.

Rights and Community. Many philosophers favor systems of thought that are centered on a single core value, and philosophers often favor parsimony and coherence. Such moral monism is particularly evident in libertarianism, the philosophy that strongly favors individual rights and promotion of liberty as its single overarching moral principle. In this system of thought, other core values are either contested or relegated to the category of exceptions. In contrast, key sociologists, on whose work neo-communitarians draw, show that societies cannot be understood by drawing on a single overarching moral principle. Members of societies have complex and not fully compatible needs. The neo-communitarian position seeks to understand as well as design society in light of the inevitable
conflicts between rights, which privilege the person, and concerns for the common good, which privilege the community or society.

**Key Modes of Accommodation.** Neo-communitarianism holds that the best accommodation between rights and the common good is where conflict between them is avoided in the first place. For instance, to the extent that people discharge their social responsibilities because they have been persuaded rather than coerced by the state, the conflict between rights and the common good is prevented.

Where members of the community go far beyond what any law requires in attending to their children, volunteering, voting, and so on because they seek the approbation of their fellow members of the community, rights are simply not engaged. No one has a right to be free from social criticism if they commit social violations. Nor is anybody entitled to the community’s approval, as this must be earned. For some anti-social behaviors, there are of course also legal punishments. However, the more a society relies on legal measures, the more limited its capacity to reconcile the two key sources of moral claims.

**Recalibrate Rights.** The conflict at issue is significantly further curtailed by recalibrating rights (or reinterpreting them) to adapt them to the changing needs of the common good. Historical accounts of rights are often cast in terms of a frequent expansion of their scope and power in constitutional democracies. In Western societies, one marginalized group after another gained the right to vote and to hold office. New rights were also articulated, such as the right to privacy. Much less attention is paid to developments that take the opposite pattern: rights that have been recast in line with the common good. Basic rights, as originally stated in the **Magna Carta**, the U.S. and French Constitutions, and those enumerated in the UN Universal Declaration of Human Rights, tend to be lacking in specificity. Over time legislatures and courts have provided specifications—and changed them to suit the times—while showing respect for the basic intent of the right. This is what is meant by those who refer to the U.S. Constitution as a "living document" and is a justification to chastise those who seek to adhere to the original intent or bare text.

Recent developments in the interpretation of the Fourth Amendment of the U.S. Constitution illustrate this idea. The Amendment stipulates that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." As new technologies emerged, the scope of such war-
warrants required re-specification. Before 9/11, warrants authorizing American law enforcement to wiretap U.S. persons were limited to a particular phone. If authorities found that the suspect had switched to another phone, then they were obliged under law to return to the court and show cause before they could be authorized to tap this additional phone. After 9/11, the specification was changed to limit warrants to a given person rather than to a given instrument, vastly increasing the power of law enforcement authorities. The new specification did not violate the basic right that protects people from search without warrants. However, this adaptation stands out when one contrasts this re-specification of the right with the warrantless searches that have been carried out, including many in violation of the Constitution.

Balancing Rights and the Common Good. Although scholars debate whether there are one or two major sources of moral commitments, courts in constitutional democracies take it for granted that full consideration must be given to both rights and the common good. Courts, and the jurisprudence up on which they rely, do not merely include the common good as a marginal or exceptional consideration but give it full measure. They readily weigh whether there is a strong public interest and the extent to which rights may have to be curtailed to serve the given common good.

Before this is further discussed, it should be noted that rights and the common good are not always in conflict. There are conditions under which they complement one another. This is the case when respect for both is very low but begins to rise. For instance, amidst the anarchy and criminality that prevailed in Russia in the early 1990s and that plagued major Iraqi cities in the years following the U.S. invasion in 2003, respect for rights as well as for the common good was particularly low. In such settings, the restoration of basic security simultaneously enhanced both the observations of rights and the service to the common good. Once basic security was restored, evidence shows that not only was respect for people’s rights better protected, but so were their ability and inclination to attend to their family members and friends, as well as other members of their immediate community, extended communities, and the nation as a whole. It is only at somewhat higher levels of social order that the tension between rights and the common good comes into focus.

Once these sources of moral commitments come into conflict, tension is limited by applying principles that determine which of these two core values should take precedence in specific cases—rather than assuming a priori that rights or the community will govern. One widely used principle is to determine whether there is a “compelling public interest”—a legal phrase often used in reference to the common good—for setting aside rights considerations. For instance, regarding the Fourth Amendment’s prohibition on unreasonable searches and seizures, courts have found searches to be reasonable when they serve a compelling public interest, defined as “an interest that appears important enough to justify the particular search at hand, in light of other factors that show the search
to be relatively intrusive upon a genuine expectation of privacy."
Similarly, people’s rights to assemble and to travel have been legally curtailed when they were found to carry contagious diseases such as tuberculosis. Another example is the principle of eminent domain, where the individual’s right to private property can be set aside when there is a compelling public need for usage of that property. The law also takes into account the extent to which rights are violated. Hence, extended detention of suspected terrorists before they are charged is tolerated, but the courts and legislatures have opposed the indefinite suspension of habeas corpus. Authorities have also been required to show cause to a judge that detention without charge should be extended.

**Legitimate a Procedure or Institution.** Another familiar way the said conflict is treated is to agree on a procedure or institution to curb such conflicts—without assuming a priori that either side will take precedence. Allowing the matter to be adjudicated by a court or a legislative assembly provides such an exit. Such treatments work only to the extent that the given procedure or institution is considered legitimate, not only in general terms, but as the morally appropriate locus for dealing with the specific issue at hand. This accommodation is a particularly familiar one and hence needs no further discussion. These modes of accommodation here discussed do not form an all-encompassing list. Rather, they are merely intended to illustrate the general idea at issue—how the two competing sources of moral commitments can be reconciled in a single society.

**Conclusion.** This essay holds that a good society must respect commitments to the common good, not merely to individual rights. This position is in sharp contrast to those who deny the standing of either of these major values. Some hold that individual rights are “nonsense on stilts,” and others believe that individual rights are merely expressions of particularistic Western values. Still others maintain that the very notion that there is such a thing as “society” is a fiction. Instead, this essay adopts a key neo-communitarian assumption that individual rights and the common good are irreducible moral commitments, and that both are essential pillars of a good society with neither side entitled a priori to the moral high ground.

At the same time, it recognizes that conflicts between rights and the common good are competing moral principles. Fortunately, the conflicts between rights and the common good are not insurmountable. As demonstrated, there are examples of various principled accommodations that can curb these conflicts and allow societies to find ways to serve both without being torn apart, mired in conflict or subjecting their public policies to gridlock.

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NOTES

1 For instance, in the early twentieth century, it was not expected that Einstein's work on the theory of relativity would help pave the way for the nuclear generation of electricity (and bombs).


4 Ibid.


6 For example, economists treat defense and basic research, which are not governed by the laws of economics and hence require government financing and control, as rare exceptions to overriding principles. See, e.g., Paul A Samuelson, "Public Goods," in Economics, 11th ed. (New York: McGraw-Hill, 1980).


10 See Vernonia School District 471 v. Acton, 515 U.S. 646, 661 (1995); United States v. Doc, 61 F.3d 107, 109-10 (1st Cir. 1995) ("[R]outine security searches at airport checkpoints pass constitutional muster because the compelling public interest in curbing air piracy generally outweighs their limited intrusiveness."); Marshall v. Horn Seed Co., 647 F.2d 96, 102 (10th Cir. 1981) (holding that "the compelling public interest in preventing or speedily abating hazardous conditions...demands relaxation of the traditional probable cause test for administrative inspections.").

11 For more discussion, see The New Golden Rule.


13 Margaret Thatcher, interview on 23 September 1987, Women's Own, 31 October 1987.

14 Neo-communitarianism—which has also been called responsive or political communitarianism—is used throughout this paper to remind the reader that the position followed here is much closer to civic republicanism or civic humanism than to East Asian or authoritarian communitarianism.