

# “I got a right!”

By Tim Sprod

“I got a right!”

Sam and Pete stopped. The voice from over the fence bellowed so loudly that they just stood there and looked at each other, intrigued.

“What's that all about?” Sam's face said to Pete.

“I dunno,” Pete shrugged.

“A right, you reckon?” rumbled another, deeper voice. “What gives you the right to trample over my new flowerbed? I've just planted it, and you've wrecked it!”

“I couldn't help that – my ball had landed right in the middle of it - and I've got a right to get my ball back. It belongs to me! And anyway, you told me I could get balls from your garden; you told me I didn't have to ask permission.”

“Permission? OK, but only to get a ball – and that's a privilege, not a right. And with privileges come responsibilities, too – like the responsibility to be careful in my garden! I have rights, too – like the right to my property, the right to have a nice garden, the right not to have my work wrecked – and you've trampled on them – rights and garden alike!”

“It's Barry and Mr Bentley,” breathed Sam. “Mr Bentley's usually such a nice bloke – listen to him rave!”

“Fred, what's the problem?” came a different voice – one that Sam and Pete recognised as Barry's mum's. “Let me have a word to Barry about all this, then I'll come round and see you - and probably bring Barry with me. It'll be easier to sort it out when we've all calmed down.”

“OK, Vanessa,” they heard Mr Bentley reply, settling down a bit now. “You're probably right. But I think your Barry has a bit of hard thinking to do about what is and what isn't a right. Some rights are more important than others, and some things people call rights just aren't rights at all.”

“What do you reckon, Sam?” asked Pete as they walked away, arm in arm. “Does Barry have a right to get his ball back?”

“Well...”, Sam replied thoughtfully, her dark eyes a little troubled, “I guess he does, in a way - it is his, after all. But I reckon Mr Bentley's right – that doesn't include the right to wreck his garden. There would have been better ways to get the ball off the flowerbed. And I'm not even sure that he had a right to go into Mr Bentley's in the first place.”

“Sure he did,” Pete asserted. “Mr Bentley gave him the right to, though Barry wasn't very sensible in the way he did it.”

“I'm not convinced that's a right, Pete,” Sam countered. “As Mr Bentley said, it's more of a privilege. People can't give you rights – you just have them.”

“Yeah...?” Pete mused. “What about the government – don't they give us rights – like, um... the right to free speech? There're plenty of countries around the world where the governments don't give people that right.”

“Hmm, I'm not sure,” replied Sam. “Governments aren't people, are they? And anyway, it's not that those people don't have a right to free speech - they do. It's just that the cops throw them in jail for exercising their right.”

“Yeah, but governments are *made* of people, aren't they? So that's like people giving rights...” Pete claimed.

“You might be right. But I'm sick of talking about rights now. I'm just going to exercise one. I'm your girlfriend and that gives me a right to a kiss from you. Hand it over now,” she demanded, mock seriously.

“I guess I will,” he said, with a shake of his finger. “But it's not your right, you know - you're just privileged... even though it feels right.” And there it might have ended, with them kissing against a lamp post, if it hadn't been for two elderly ladies coming around the corner.

“These young kids these days,” one muttered to her companion, just loud enough for them to hear. “What makes them think they've got a right to act so brazenly in public?” To her surprise, Pete and Sam just burst out laughing.

## What does 'right' mean?

In this passage, the word 'right' is most often used in the sense of an entitlement. However, there are a number of places where it is used in a different sense - when the ball lands right in the middle of the garden; when Vanessa is probably right; when kissing feels right.

In fact, the word 'right' is used in many more ways than this.

### Exercise

In small groups, find as many sentences from the story as you can, in which the word 'right' is used with a *different* meaning. Now try to think of another word that could replace 'right' in each of those sentences.

## What is a right?

A right is a type of entitlement - it is a claim that we ought to have, or be able to do, something. Here, it may seem that 'we' must be understood in the plural: that is, everybody has the same entitlement - at least, for universal rights (are all rights universal?). Yet it is not clear exactly why we have rights, and where they come from. Philosophers disagree both about where rights come from (or even, if they exist at all), and what claims for entitlements deserves the name of a 'right'.

Some will make a distinction between a legal right - one which has been granted by a government, and a universal human right - one which everyone has whether their government recognizes it or not. If there are universal rights, then where do they come from? A number of competing explanations have been advanced. Some claim they are 'God-given', others think they have their origin in nature, or in human nature. Some will claim that they are self-evident when we think about them - our reason tells us that people have such rights. Another theory holds that they are products of the social bonds that hold us together, whether the social powers of the day acknowledge this or not.

Historically at least, there has been a development in the concept of 'rights'. While historians and philosophers can disagree about how to categorize these rights, here is one way. The first rights to be asserted were the political rights: for example, the right to practice privately one's own religion, or the right not to be unjustly imprisoned. These early rights were mainly 'freedoms from': freedom from oppression and persecution. Later these extended to more social rights, which are more in the nature of 'freedoms to': freedom to speak one's mind, for example. Later, people began to claim welfare rights: the right to a job, or a minimum income. Finally, we have more recently seen the rise of lifestyle rights, such as the right to live according to your sexual preference.

Rights talk has so infiltrated our consciousness that it is not uncommon to see all sorts of things claimed as rights these days. In Australia, we have the example of the alleged right to own guns - note that in the USA from where this slogan was imported, there *is* a legal basis in the Constitution for claiming such a right, whereas there does not seem to be in the Australian Constitution. Other rights that have been recently claimed are the right to die with dignity, and the right to take drugs if you want. Whether these are genuine rights, or merely the assertion of particular political or moral claims, is a question well worth

debating. It is not uncommon for children to invent their own rights, as maybe Barry is doing in this story.

### **Where do rights come from?**

1. Does Barry have a right to get his ball?
2. Was Barry given a right to get his ball by Mr Bradley?
3. Does Mr Bradley have a right to decide who should come into his garden?
4. What, or who, gives Mr Bradley that right?
5. Would Mr Bradley have the right to decide who should come into his garden even if there was no law about private property? Or no government to pass the law?
6. Are there any rights which you would still have, even if the government ignored them?
7. Where do rights come from?

### **What are rights? What types of rights are there?**

1. Does Barry have a right to get his ball, or is it merely that he wants his ball?
2. If you want to do something, does that mean you have a right to do it?
3. If you claim that doing something is your right, does that make the claim stronger?
4. Is there a right to do whatever you want?
5. What are the rights are claimed in this story? Which ones do you think really are rights?
6. Are any of these rights of a different kind from the others?
7. Are any of them more important than others?
8. In what ways is the right to free speech like the right to have a job? In what ways is it different?
9. What kinds of rights are there? Are any of them more important than others?

## **Rights, responsibilities, duties and obligations**

Mr Bentley suggests to Barry that the right to come into his yard is accompanied by a responsibility - to be careful in his garden.

One influential view of rights holds that with every right, there comes a responsibility. For example, if I have the right of free speech, then I have a responsibility to allow all others to speak freely. Another responsibility I might have is the responsibility to use my speech in a way that does not infringe on others' rights - so that I ought not to say certain nasty or defamatory things. Arguably, if we ignore our responsibilities to others when we assert our right, then we are forfeiting the right. For example, if we assert that we have a right of free speech, and use that free speech to do harm to others - incite people to violence against them, say - then we no longer have a right to free speech in that instance.

Of course, such a position has potential problems. It implies that people's rights can be ignored or cancelled if they are not acting responsibly, and some see a great danger in this. Even the irresponsible have rights, they will say - those rights cannot be taken away just because of irresponsible behaviour. Indeed, having rights is what protects the weak and powerless (including the irresponsible) from the powerful.

However, as discussed below (Rights: ordering and conflict), rights cannot be absolute, applying in all cases, because the use of a right without observing the accompanying responsibility very often involves violating somebody else's right.

1. Why does Mr Bentley say that Barry has a responsibility to be careful in his garden?
2. Does Barry have a right to use his ball, seeing he owns it?
3. Does Barry have a right to use the ball in any way he likes?
4. What if Barry wants to bounce the ball off your head - does he have a right to do this as hard as he likes? Or does the right to use his ball come with a responsibility to use it only in ways that don't hurt others?
5. Can you think of other rights that come with responsibilities?
6. Do all rights come with responsibilities?
7. If you have a right to do something, and you don't observe the responsibility that comes with the right, does that mean you lose the right?
8. Can you lose a right, or do you always have them?

Above, we have considered whether all rights carry responsibilities. However, the whole issue can be looked at from the other direction. Some philosophers claim that it is not rights that are paramount, but duties and obligations. In other words, we all have duties towards others imposed upon us. Here's an example: we have a duty to always treat others as ends in themselves, and never merely as a means to our own ends, as Immanuel Kant famously puts it. By this he means that, while it is permissible to get another to be an instrument to achieve something we want (say, to clean our house), we must always *also* treat them with dignity, as someone who has their own goals and wishes (e.g by paying them a reasonable wage to do the cleaning, rather than by enslaving them). Under this view, one person's rights arise as a consequence of the duties others have towards them.

1. Does Barry have a duty to be careful in Mr Bentley's garden when he is in it?
2. Sam is Pete's girlfriend. Does this mean that Pete has an obligation to be nice to Sam?
3. If Pete does have an obligation to be nice to Sam, does that mean Sam has a right to be treated nicely?
4. Do you have a duty to be nice to your parents?
5. Do your parents have a right to be treated nicely by you?
6. Can you list some other duties or obligations that you have?
7. Do parents have a duty to feed their children? If so, does that mean children have a right to be fed by their parents?
8. Do you have a duty to behave yourself in school? If so, does that mean teachers have a right to be able to teach well behaved classes?
9. If you have a right to free speech - to say whatever you like - does that mean everyone else has a duty to let you say what you want? Do they have an obligation to listen to you?
10. Which comes first: duties or rights?
11. What is the relationship between duties and rights?

## Who has rights?

In the story, all the characters are either adults or adolescents: no children or animals appear. Yet it is a good question whether younger children and animals have the same rights as adult humans.

One of the implications of the view that all rights imply responsibilities is that, if there is no possibility of taking on the responsibility, then the corresponding right does not exist. Take, for example, something as basic as the right to life - not to be killed by others. If this right

depends on its corresponding responsibility, then I only have the right to life if I can choose to desist from killing others.

If this view is applied to the question of the treatment of animals, it seems to lead to the conclusion that talk of Animal Rights is possibly mistaken. This is because animals do not seem to have the capacity to take on the reciprocal responsibilities. If animals do not have rights, does this mean that we can treat them in any way we like? Not necessarily. It may be that we have duties to animals, such as not to mistreat them.

1. Barry says he has a right to get his ball back. Would he still have that right if he were 5 years old?
2. Mr Bentley has the right to go anywhere in his country that he wants. Does a 3 year old have that right?
3. Do you have the right for your wishes to be listened to?
4. If you have the right for your wishes to be listened to, does this mean somebody has a responsibility to listen to your wishes? If so, who?
5. If you have the right for your wishes to be listened to, does this mean that you have a responsibility to listen to other people's wishes?
6. If a pet has a right to have its needs met, does that mean it has the responsibility to meet the needs of others - like its owner?
7. If a pet cannot take on a responsibility, does that mean it doesn't have the related right?
8. Do animals have rights?
9. If animals don't have rights, does that mean we can do anything to them we want? Or would we still have duties towards animals?

## **Rights: ordering and conflict**

Just because somebody has a right doesn't necessarily mean that it must be met at any cost. Many times in the complex social world, rights conflict. The American jurist Oliver Wendell Holmes, Jr. famously said "The right to swing my fist ends where the other man's nose begins". Larger scale examples include the clash of the right to free speech and the right to feel and be safe, in the case of incitement to violence, or the right to privacy for individuals and the right to know, in the case of celebrities' "private lives".

Sometimes it seems that people claim a multitude of rights these days. Working out which of them are more important, which should take precedence in the cases where they conflict, and how the decision about this should be reached can be very difficult. Claim and counter-claim, argument, negotiation and compromise are all involved. In the larger society, this is one of the main roles of the political system.

1. Does Barry have a right to his own property (his ball)?
2. Does Mr Bentley have a right to his own property (his back garden)?
3. Which is more important - Barry's right or Mr Bentley's right?
4. Does Barry's right to his ball mean that he has a right to go and get it from Mr Bentley's garden?
5. Does Mr Bentley's right to his back garden mean he has the right to stop Barry coming to get the ball?
6. If Mr Bentley was to insist on his right to stop Barry coming into his garden or get his ball back, and Barry was to insist on his right to go and get his ball, could there be a solution to this? If so, how could Barry and Mr Bentley find this solution ?

7. Are there rights that conflict? Give an example.
8. Are some rights more important than others? Which sorts of rights are most important? Why?
8. How should conflicts between the rights of two different people be settled?
9. How should conflicts between the rights of two different groups of people in the same society be settled?
10. How should conflicts between the rights of two different nations be settled?

## **Forfeiting a right**

Barry claims to have a right to get his ball back. Mr Bentley claims that it is a privilege, not a right. It seems likely that whatever it is, Barry will lose it if he is not more careful in how he uses it.

Some people will claim that rights are absolute - that you always have them. Others can claim that if a right is not exercised properly, it can be forfeited. For example, it might be claimed that the right to free speech is forfeit if it is used to incite racial hatred. Of course, whether you think a right can be forfeited or not is likely to be influenced by your account of where rights come from. If they are natural, a part of being human, then it is hard to see how they can be forfeited. This is the position of the US Constitution ("We hold these rights to be self-evident"; "inalienable rights"). If they are granted by God, then they would also seem to be inalienable, although it could be argued that God might withdraw them. If they are granted by Governments, then they can clearly be withdrawn.

Under an account of inalienable rights, it can still be the case that people are not allowed to exercise some rights because others are seen to be more important (as in the free speech/racial hatred case).

1. Could Mr Bentley withdraw Barry's right to get his ball back?
2. If a right can be withdrawn, is it really a right?
3. Do our rights depend on whether we use them wisely?
4. Are rights just something you have, or something you earn?
5. Can a government withdraw a right, like the right to free speech, in special circumstances, like wartime?

## **What is the difference between a right and a privilege?**

Rights and privileges can be confused, particularly if rights are seen as something that is granted, especially by a government. If rights are taken as being inalienable, however, then this is a clear distinction between rights and privileges. Another possible difference between rights and privileges is that rights apply to everyone, whereas privileges apply to only a select group - your discussion may seek to establish whether this difference is supportable in all cases. Are some rights only available to some? Should some privileges apply to all? A third difference that can be argued is that you have a right regardless of what you do or how you treat others, whereas a privilege imposes some sort of obligation to safeguard it by being careful of your treatment of others, especially the interests of the person who granted the privilege. But again the distinction might not be so clear-cut, for rights surely also impose responsibilities. Some have argued that these responsibilities are

not necessarily imposed on all; as long as the majority keep to them, everyone has the right. This is sometimes referred to as the “free rider” problem (a phrase that has a wider application than just to rights and responsibilities). Thus, the responsibilities attached to a right can be ignored by some, without affecting their access to that right, but the same is not the case for a privilege.

1. Does Barry have a right to his ball when it is in his possession?
2. Does he have a right to his ball when it is in Mr Bentley’s garden?
3. If Mr Bentley allows Barry to come into his garden to get the ball, does that mean Barry has the right to do it?
4. If Mr Bentley allows Barry to come into his garden to get the ball, does that mean it is a privilege that Barry now has?
5. If your right depends on someone else, is it a right?
6. If you are granted a privilege, do you have to use it wisely?
7. If you have a right, do you have to use it wisely?
8. Can a privilege become a right?
9. Can a right become a privilege?