The Disvalue of Rights

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A thesis submitted to the Faculty of Law for the degree of Master of Philosophy

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Abstract

Rights are good for their holders, and duties are bad for their holders. While duties restrict their holders' freedom, rights enhance it. This is the gist of the value assumption defended by the Standard Picture of Rights. The fact that grounds this endorsement is that rights are normative protective objects. They function as shields or enhancers of their holders' autonomy and status. Thus, right-holding is seen either as necessarily of holder-relative, non-instrumental value, or as it cannot be of holder-relative, non-instrumental disvalue.

Contrary to this, the thesis suggests that legal and moral rights can be non-instrumentally disvaluable for their holders. If true, the Standard Picture is wrong about the value of rights and right-holding. The thesis considers three examples of rights that holding them entails a holder-relative, non-instrumental disvalue. Two are legal rights: the Legal Right to Die and the Criminal Defendant's Legal Right to Lie. The third one is a moral right, the Children's Moral Right to Be Loved. Each of these examples reflects one of three ways rights can be disvaluable. These classes of disvaluable rights are, respectively, Distorting Rights, Disabling Rights, and Self-Defeating Rights. The examples serve two aims: (i) to argue that in those particular cases, there is good reason to eliminate or waive one's right, and (ii) to offer a further reason to believe that the Standard Picture errs regarding the value of rights.

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Introduction

Rights seem indispensable. They protect the freedom of their holders by creating reasons for third parties either not to interfere or to ensure the exercising of rights. Some of these reasons are duties. Thus, while duties restrict the holder's freedom, rights enhance it. It is not hard to assume then, if morality and legality care for us, that rights should be an essential part of our normative landscape. The idea is simple: we have rights because our autonomy or status are better off because of them. We have a moral right to defend ourselves from unjust attacks because we need it to protect our lives. The law gives children a right to education because they need education. Rights-giving, people say, should always be welcomed and incentivised.

Philosophers have explained the value of right-holding in various ways. They have asserted that '[t]o have a right … is … to have something which society ought to defend me in the possession of';[1] or that some rights are valid claims necessary to live in a practice of mutual recognition and accountability, enabling 'us to "stand up like men"'.[2] Other people argue that rights are intrinsic goods or that right-holding entails inviolability, which converts rights into intrinsically valuable objects.[3] Others contend that rights are trumps,[4] or that rights are essential to achieve one's own ends in a life shaped by oneself.[5]

All these standpoints, from a wide range of diverse ethical and legal backgrounds, can be summarised in the position I call the Standard Picture of Rights. Given that rights are necessarily protective normative objects, the Standard Picture assumes a particular value judgement regarding right-holding. Roughly put, right-holding is *good* for the holder. This, however, is a two-sided claim. For the Standard Picture, duty-holding is *bad* for its holders. Joseph Raz neatly describes the gist of the Standard Picture's – what he calls the 'orthodoxy' – value assumption of right and duty-holding: while 'duties are fetters' and 'cannot be good be in themselves,' rights 'are the sort of thing which is capable of being of *ultimate*, *rock-bottom moral value*'.[6]

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[1] John Stuart Mill, *Utilitarianism* (George Sher ed, 2nd edn, Hackett Publishing Company 2001) V § 25.
[2] Joel Feinberg, 'The Nature and Value of Rights' [1970] The Journal of Value Inquiry 243, 252. See also Feinberg's praise of moral rights, Joel Feinberg, 'The Social Importance of Moral Rights' (1992) 6 Philosophical Perspectives 175.
[3] FM Kamm, 'Rights' in Jules L Coleman, Kenneth Einar Himma and Scott J Shapiro (eds), *The Oxford Handbook of Jurisprudence and Philosophy of Law* (1st edn, Oxford University Press 2004) 507. See also, Thomas Nagel, *Concealment and Exposure: And Other Essays* (Oxford University Press 2002) 39-40.
[4] Ronald Dworkin, 'Rights as Trumps' in Waldron (ed), *Theories of Rights* (Oxford University Press 1990).
[5] Robert Nozick, *Anarchy, State, and Utopia* (first edition 1974, Blackwell 1999). See H.L.A. Hart's interpretation of Nozick's account of rights, HLA Hart, 'Between Utility and Rights' (1979) 79 Columbia Law Review 828, 835.
[6] Raz, *Ethics in the Public Domain* (n 8) 31 [emphasis added].

This is the picture that the thesis aims to controvert. I believe it misunderstands the complexity of rights' existence and value. The claim is that legal and moral right-holding can be of *holder-relative*, *non-instrumental disvalue*. Let me explain this mouthful by unpacking its two main features.

Right-holding can entail non-instrumental disvalue. People have already focused on explaining how exercising a right can create disvaluable consequences. One can wrongly exercise a right which content should bring value about. Holders might also abuse their rights. All this, albeit interesting, is different from the focus of this thesis. I am interested in how having a right can be disvaluable regardless of the consequences its exercise might produce.

Right holding can entail holder-relative disvalue. Right-holding can be bad for many reasons. The fact that a nation has a right to self-determination, albeit valuable for them, can be bad for third people. For example, this right might bring enough disvalue to the world to make the right-holding all things considered disvaluable. The thesis, however, is only concentrated on assessing the disvalue that right-holding can entail for the very holder of the right. The question of whether holding a right can be disvaluable for other people, either non-instrumentally or instrumentally, rather than for the right-holder, is an serious possibility that will not be directly addressed in the thesis.

Three disvaluable rights will be analysed. Each of these reflects one out of three different ways the holder-relative, non-instrumental disvalue can obtain. First, having a right can distort the way one attaches personal meaning to one's life and death undermining the holder's autonomy (Distorting Rights). In this vein, the thesis will analyse the Legal Right to Die.[7] Second, right-holding can disable the holder from participating in our most deemed intrinsically valuable relationships (Disabling Rights).[8] I shall discuss the Criminal Defendants' Legal Right to Lie. Third, right-holding can defeat the possibility, or dramatically reduce it, of fulfiling the interest that the same right aims to protect; thus, rights can self-defeat (Self-Defeating Rights).[9] The right treated will be the Children's Moral Right to Be Loved.

Rights come in many flavours. The first two rights analysed here are legal rights, whilst the third right is a moral one. Notwithstanding their differences, they share the protective core. Rights, both legal and moral, are there to enhance their holders' autonomy or status. At least, it is assumed that they are *not* there to *disserve* them. I shall argue that right-holding can be holder-relative bad because it reduces autonomy or status. For legal rights, the task is easier. Legal right-holding can *exist* and yet be disvaluable. The argument seems to differ for moral rights. It seems that morality cannot be that as tricky as to give someone a right that, by just having it, entails a holder-relative disvalue. Some people would say that such

[7] More precisely, the Legal Right to (Die) Physician-Assisted Suicide.
[8] I here portray the case of the Criminal Defendant's Legal Right to Lie; this is a common legal feature of the criminal system of most civil law countries.
[9] I will use the case of the moral Right to Be Loved; see S Matthew Liao, *The Right to Be Loved* (Oxford University Press 2015).

a moral right cannot exist. However, even assuming this strand of thought, the value of a moral right can be tracked because of how it fosters the lives of other people rather than the right-holder.

Rights have their opponents though. Writers, in different degrees and frames, have concentrated on arguing how rights[10], rights-talk, [11] or the concept of rights[12] are ill-grounded or disvaluable. Many others have focused, for example, on arguing that 'natural' rights are a chimera,[13] or that the inflation of constitutional rights is problematic.[14] Simone Weil, for example, argues that rights are ineffective. As she puts it, '[t]he concept of obligations take precedence over that of rights … [a] right is not effective on its own'.[15] I am not committed to the truth of any of these arguments. Although I shall criticise the Standard Picture, I am far from considering myself an opponent of rights. This is why, perhaps, my argument differs from what these other people have argued. Contrary to most of these, I take the existence and normativity of rights seriously. Indeed, the thesis will not argue that right-holding can be disvaluable for a deviant, non-'rightsous' reason. The point is that right-holding can be bad for the holder precisely because the right functions in the normative way it should supposed to work.

I believe I am not even the first opponent of the Standard Picture. Joseph Raz proposes, with some differences, a similar way to understand right-holding's value.[16] I must acknowledge how influential his way of liberating normative objects from orthodox assumptions was for me. The thesis shall explore Raz's argument about the intrinsic value of duty-holding. I believe that his argument succeeds in *libe*rating duties, which paves my argument regarding right-holding's disvalue.[17] It will be argued, however, why I believe that Raz's intention to liberate rights falls short and yet why it is distinct from mine. I hope this thesis can be a further step in liberating rights.

This work has two kinds of aims: general and specific ones. One specific aim is to show that there are good arguments not to have the two legal rights that will be analysed here – the Legal Right to Die and the Criminal Defendant's Legal Right to Lie. There is another twofold specific aim regarding the

[10] Theological-related accounts, such as Joan Lockwood O'Donovan or Alasdair MacIntyre's, have criticised subjective rights for wrongly accentuating the selfish, competitive, and individualistic dimensions of human beings; Nigel Biggar, *What's Wrong with Rights?* (Oxford University Press 2020) Chapter 6.

[11] Onora O'Neil conceives human rights declarations just as 'noble aspiration[s]'; Onora O'Neil, 'The Dark Side of Human RIghts' (2005) 81 International Affairs 427, 429. And she laments of '[rights'] tendency to inspire an inflated, absolutist rhetoric'. This is a quote from Nigel Biggar, another reticent of rights, see Biggar (n 10) 31.

[12] For Karl Marx, rights are inherently one of those devices that perpetuate the wrongful, egoistic capitalist structure; see Jeremy Waldron, *'Nonsense upon Stilts': Bentham, Burke, and Marx on the Rights of Man* (Methuen 1987) Chapter 5.

[13] Edmund Burke initiated a tradition that attacks the abstractness of 'natural' rights. Jeremy Bentham has also joined this tradition: see HLA Hart, *Essays on Bentham: Jurisprudence and Political Theory* (Oxford University Press 1982) 163.

[14] Jamal Greene, 'Rights as Trumps?' (2018) 132 Harvard Law Review.

[15] Simone Weil, *The Need for Roots. Prelude to a Declaration of Obligations towards the Human Being* (Ros Schwartz tr, first published 1952, Penguin Books 2023) 3.

[16] Joseph Raz, *Ethics in the Public Domain. Essays in the Morality of Law and Politics* (first published 1994, Clarendon Press; Oxford University Press 1995) Chapter 2 and 3.

[17] Joseph Raz, 'Liberating Duties' (1989) 8 Law and Philosophy 3. Reprinted in Raz, *Ethics in the Public Domain* (n 6) Chapter 2.

moral right – the Children's Moral Right to Be Loved: (i) to argue that a holder-oriented justification of this moral right is implausible and (ii) to argue that if this right was justified for other non-holder-oriented reasons, its recognition entails the holder-relative, non-instrumental disvalue.

The general aim is to criticise the Standard Picture's project. If having both legal and moral rights can be bad for their holders, the Standard Picture's claim loses even more strength. This might contribute to changing how we conceive the role and value of rights. Furthermore, one might gain a new way of conceiving normativity by embracing the obscurity of rights. However, this last proposition is far from the scope of this thesis.

The thesis is divided into four chapters. Chapter 2 has an introductory taste. First, it will show how rights and right-holding have been explained. Then, it will depict the Standard Picture of Rights. It will elicit the value assumption that the Standard Picture holds regarding rights (the Right-Holding as an Enhancer View) and duties (the Duty-Holding as Fetter View). It will also offer an argument explaining why duty-holding can be non-instrumentally valuable (Liberated View of Obligations). In a nutshell, some special duty-holding is valuable because it contributes to the existence and value of some of our most invaluable personal relationships. This is crucial to pave the way to build my argument regarding rights, which is the last purpose of Chapter 2: to postulate my claim that right-holding can be of holder-relative, non-instrumental value. It will also anticipate the structure of the next three chapters. These are focused on analysing the examples of rights that, just having them, entail the holder-relative, non-instrumental value. Chapter 3 analyses the Legal Right to Die – ie. the legal right to request physician-assisted suicide. Chapter 4 describes the Criminal Defendants' Legal Right to Lie, which predominantly exists in countries with a civil law system. Lastly, Chapter 5 analyses the Children's Moral Right to be Loved.

1. Rights, Right-Holding, and (Some) Obligations

In this chapter, I shall first offer a classic but necessary review of how philosophers have explained the concept and function of rights. I will then concentrate on the value of rights. I will argue that most philosophers of rights share either of the following two value assumptions: (i) right-holding is necessarily of holder-relative, non-instrumental value, or (ii) right-holding cannot be of holder-relative, non-instrumental disvalue. I call this framework the Standard Picture of Rights. The other side of the coin is duties. The Standard Picture also assumes that having a duty cannot be of holder-relative, non-instrumental value. Lastly, I argue that there is reason to believe that both duty-holding and right-holding can, respectively, be of holder-relative, non-instrumental value and disvalue.

1.1 What Rights Are

1.1.1 The Hohfeldian Framework

Rights have been largely analysed in a conceptual fashion. In one sense, the concept of 'rights' refers to a state of affairs in the world. So, prior to understanding the normative force or value that this phenomenon has, there is an impulse to explain it by making explicit the logic behind it. Wesley Newcomb Hohfeld is the best explainer of the logic of rights. For him, the best way to understand rights is by eliciting the *correlative positions* attached to them. A position is a normative standpoint that a person holds in a certain relationship.[18] Suppose Aida has loaned money to Birkin. Regarding the loan, they hold different statuses in the relationship. Aida is a creditor, and Birkin a debtor. In rights terms, Aida has a right to claim that Birkin pays the money back (Φ), and Birkin has a duty to pay it back (Φ). For Hohfeld, this speaks about the necessary correlativity of rights to duties.[19] This is a logical necessity for him. A has a right against B that B Φ only if B has an obligation to Φ-ing.[20]

Aida has a specific kind of right. She has a *claim* that another person, Birkin, does what he owes her – pay the loan. A claim backed-up by a duty is a *claim-right*. For Hohfeld, these are the only *proper* rights.[21] All the other normative positions that do not comply with this definition, and which people mistakenly call rights, can be split into the following three incidents: *liberties, immunities,* and *powers*. For

[18] I am using 'person' in the legal sense.
[19] I will use 'duties' and 'obligations' interchangeably.
[20] Wesley Newcomb Hohfeld, 'Some Fundamental Legal Conceptions as Applied in Judicial Reasoning' (1913) 23 Yale Law Journal 16, 32.
[21] Hohfeld asserts that 'we should seek a synonym for the term 'right' in this limited and proper meaning [those rights that correlate with duties], perhaps the word 'claim' would prove the best'; see Hohfeld (n 5) 32. See, also, Duarte d'Almeida (n 5) 556, 564.

Hohfeld, 'the term 'rights' tends to be used indiscriminately to cover [these incidents], rather than a *right in the strictest sense* … '.[22]

Hohfeld's contribution is immense. His analysis allows us to explain the relational logic behind both legal and moral rights.[23] Understanding what a claim is and how to have and exercise a claim is to understand a significant part of the nature of our interpersonal normative relations. However, although claim-rights are necessary to explain many dimensions of normativity, I do not think there is a strong reason to believe that they are *the* only true rights. The obvious example is criminal law. This realm of law, among others, cannot be explained only in terms of claim-rights.[24]

It is true, however, that a major part of tort and contract law can be explained using Hohfeld's concept of claim-right. But Hohfeld's bold assertion that only claim-rights are proper rights has also been contested in the context of private law.[25] Take the case of property rights as an example. Claims are insufficient to explain the ownership of your house. One must need other rights or Hohfeld's incidents. Moreover, Tony Honoré affirms that one needs all other incidents to explain what it is to own something. As he puts it, '[n]o doubt the concentration in the same person of the right (liberty) of using as one wishes, the [*claim*] right to exclude others, the *power* of alienating and an *immunity* from expropriation is a cardinal feature of the [ownership] institution'.[26]

Have we answered the question about the true nature of rights by explaining the Hohfeldian conceptualisation of rights? I do not think so. But notwithstanding this, I will not give exclusivity to any specific account of rights here. I am interested in a range of phenomena that lawyers, moral philosophers, and even laypeople commonly refer to as rights. This range certainly involves claim-rights. But also involves liberty-rights, immunity-rights, power-rights, any bundle of some or all of them, and so on. These phenomena exceed what Hohfeld has in mind when describing what a right is. The main aim of this thesis is to assess the value of rights and right-holding, especially on how these phenomena that people call 'rights' affect our normative landscape. So, to understand the normative role of rights, one must analyse them in the broadest possible sense.

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[22] Hohfeld, 'Some Fundamental Legal Conceptions as Applied in Judicial Reasoning' (n 6) 30 [emphasis added].

[23] Although Holhfeld's intention is to explain *legal* rights, his account has been largely used to explain all kinds of right-based interpersonal relationships.

[24] As Nigel Simmonds asserts, 'the civil (or private) aspect … is precisely its breach of a duty owed to a specific person; the criminal (or public) aspect of the act is its deviation from standards of conduct that are placed *upon all persons as a general demand*'; NE Simmonds, 'Rights at the Cutting Edge' in Matthew H. Kramer (ed), *A Debate Over Rights* (Oxford University Press 2000) 142 [emphasis added].

[25] Ronen Perry argues that Hohfeld's conceptualisation of jural relations is extensionally invalid in private law. Perry believes that Hohfeld's work is problematic in understanding private legal relationships. For him, the fact that, in private law, people may hold general duties that are not owed to any person in particular, is a reason to assert that Hohfeld's account is not sufficiently sound; see Ronen Perry, 'Correlativity' (2009) 28 Law and Philosophy 537.

[26] Tony Honoré, 'Ownership' in AG Guest (ed), *Oxford Essays in Jurisprudence* (Oxford University Press 1961) 123 [emphasis added].

Other philosophers believe that to understand what a right is, one should give a story explaining *why* and *for what* we have rights. It is not about eliciting the necessary and sufficient conditions for a right to obtain. Rights-theorists are interested in making the true *function* of rights explicit. Let me briefly unpack the two most prominent, classic explanations.

Although there are other nuanced contemporary accounts of rights, all of them are either versions or reconfigurations of the following two theories.[27] And that's what makes them both classic and prominent. On the one hand, the Interest (or Benefit) Theory (hereinafter, IT) holds that what characterises rights is that they fulfil the *interests* of their right-holders. On the other hand, the Will (or Choice) Theory (hereinafter, WT) holds that what explains the nature of a right is the power that its holder possesses to *control* someone else's normative landscape. Let us briefly show these classic accounts of what rights are. A relevant clarification must be made. This paper is not about picking one of these. However, there is a reason why I present these theories. Explaining both WT and IT will help me to construe the image of what I call the Standard Picture of Rights (hereinafter, SPR). The idea of the Standard Picture of Rights involves a number of prominent authors who understand right-holding and its value in a certain way. Showing how the most prominent theories of rights think about the function(s) of rights will help to fulfil the concept of the Standard Picture of Rights.

1.1.2 Will Theory

One may believe that what explains rights is the normative ability that their holders have to do things with them. One may say, then, that Aida has a right when he is justified in having a certain grade of control over the normative landscape[28] of Birkin (ie. altering the form in which Birkin should conform with reasons). This is the position supported by the Will Theory.

Naturally, now, we would like to know what this 'certain grade of control' is. H. L. A. Hart perspicuously explains the features of this control. For Hart, Aida has a right to Φ if Birkin is duty-bound to Φ, and Aida has the justified power to *waive* and *enforce* Birkin's duty to Φ, and to waive Birkin's secondary duty of reparation or compensation for breaching her duty to Φ.[29] The following formulation of the theory can be offered:[30]

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[27] There are other more contemporary theories. For a *hybrid theory of rights*, see Gopal Sreenivasan, 'A Hybrid Theory of Claim-Rights' (2005) 25 Oxford Journal of Legal Studies 257. For Leif Wenar's *several functions theory* and *kind-desire theory of claim-rights*, see respectively, Leif Wenar, 'The Nature of Rights' (2005) 33 Philosophy and Public Affairs 223; Leif Wenar, 'The Nature of Claim-Rights' (2013) 123 Ethics 202. For a *demand theory,* see Stephen L Darwall, *Morality, Authority, and Law* (Oxford University Press 2013) 168–178.

[28] By 'normative landscape', I mean the set of normative interests and normative objects, and the relations between them, that a person has. Compare, David Owens, *Shaping the Normative Landscape* (1st ed, Oxford University Press 2012).

[29] Hart, *Essays on Bentham* (n 13) 183–184.

[30] I am using the definition proposed by Gopal Sreenivasan; see Sreenivasan (n 29) 258-259.

Will Theory (WT): X has a right to Φ if and only if X has a justified *measure of control* over Y's duty to Φ

Measures: the abilities to *waive* Y's duty to Φ, *enforce* Y's duty, and *waive* Y's *secondary* duties

The view is clearly focused on the right-holder's power and on the existence of a correlated duty. For Hart, this means that the action required by the obligation (Φ) must be the same action (Φ), or a derivative one, that the right-holder must be able to control.[31] At the same time, this normative power, or ability to control other's normative landscape, is what could make WT an easy target. For a right to obtain, its holder must have the ability to use it. Hence, some problematic implications challenge the plausibility of the explanation. Can people who are physically unable to control others' duties hold rights? The answer that flows from the very WT is that they cannot. The implication is that babies, comatose people, animals, and any other entity unable to use the right cannot be rights-holders. Will-theorists are even prone to argue that this is an extensionally desired implication. Children do not have rights, but third persons, their representatives, hold these in order to protect them. However, for some people, this is highly implausible. If rights are meant to be protective tools, the argument goes, the same children must hold them.

1.1.3 Interest Theory

Here is where the Interest Theory finds its ground. IT's proponents argue that, instead of focusing on how Aida might shape the normative landscape of Birkin by, say, controlling Birkin's duties, we should assess whether Aida has an interest that is sufficiently valuable to hold Birkin under a duty. Hence, Aida's interest in not dying is sufficiently valuable to create a moral duty for Birkin not to kill Aida. Here is a formulation of IT:

Interest Theory (IT): X has a right to Φ if and only if Φ is sufficiently valuable to ground Y's duty to Φ.[32]

[31] See HLA Hart, 'Are There Any Natural Rights?' (1955) 64 The Philosophical Review 175, 179–182. For Hart, it is 'absurd to speak of duties … to ourselves'; ibid 181.

[32] Joseph Raz, *The Morality of Freedom* (first published 1986, Clarendon Press 2009) Chapter 7. Although Raz offers a general account of rights for both moral and legal rights, he also specifies what distinguishes *legal rights*; see Raz, *Ethics in the Public Domain* (n 6) Chapter 12.

Although Jeremy Bentham was probably the first philosopher to finely articulate a version of IT,[33] I will here use Joseph Raz's account. The gist of it should appear clear from the formulation. What ultimately grounds the existence of a right is the value of the purported holder's interest. In Raz's account, the value of people's interests is explained by whether they foster the *well-being* of the would-be right-holder. But it is important to note that, for Raz, what is best for people is not a subjective matter. It is not the case that because Paul sincerely believes that Φ is valuable for him, Paul has a right to Φ. Raz argues that the only valuable interests are those that any rational individual would desire to see fulfilled.[34]

IT seems to solve WT's problems. Babies have rights because, albeit unable to choose, they have valuable interests to protect. But this comes at the cost of overinclusion. The classic objection to IT is that it blurs the distinction between beneficiaries and right-holders. In some cases, although the owed action (Φ) of the duty-holder (A) benefits B, she owes Φ-ing to C, someone who does not benefit from A's Φ-ing, and is not owed to the beneficiary (B). Thus, C is a right-holder who is not the direct beneficiary of the required correlative action.[35] Raz certainly offers a counterargument to this.[36] I will later reprise it in the next section. Besides this, the point is to show that both accounts of rights are still strongly contested. For this and other reasons, I will not champion either of them. I choose, instead, the following strategy.

1.1.4 Rights as Protective Normative Objects

For the purpose of this work, rights will be understood in the broadest possible way. Let's initially agree that rights are a certain kind of normative object people hold. They come in different flavours and with different scopes. They can be legal, non-legal, moral, human, institutional, conventional, fundamental, derivative, and so on. Let us also agree that having one of these may give you the normative ability to do things you want to do, or they may also allow you to fulfil the content of your most valuable interests. Rights, thus, are intended to provide normative support to fulfil what the holder desires when she wants to. The support can be active or passive; respectively, it can give the holder the permission or the power to Φ (eg. to speak freely or to make a promise), or it can give her the claim that other people Φ (eg. to claim that the state provides you with food). Rights can be positive or negative. This means that, respectively, rights may give their holders the power to Φ by either stopping third parties from interfering

[33] See Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (HLA Hart and JH Burns eds, Oxford University Press 1996) Chapter XVI. For H.L.A. Hart's perspicuous description of the Benthamite Benefit Theory, see HLA Hart, *Essays on Bentham: Jurisprudence and Political Theory* (Oxford University Press 1982) 174-188.
[34] Raz, *The Morality of Freedom* (n 32) 317–318.
[35] Hart, 'Are There Any Natural Rights?' (n 31) 180.
[36] Raz, *Ethics in the Public Domain* (n 6) 51.

in the holder's Φ-ing (eg. to prevent other people from interfering in one's use of drugs) or, on the contrary, obliging third parties from to actively support the holder's Φ-ing (eg. the state securing that one can exercise one's right to education). Rights protect the holders to the extent of giving reasons to third persons, and some of them are duties with different degrees of stringency and directedness, to allow the holders exercising their rights.

The common feature of all rights is that they protect their holders. More precisely, rights give holders a set of protected paths to walk. Pregnant agents, for example, cannot permissibly abort if they do not hold a right to do it. They 'can' abort. They 'can' walk the abortion path. But what the right offers is a *normatively protected* way to walk it. Thus, the legal right to abortion protects pregnant agents because they have a justification to do it, freeing them from normative costs, say, going to prison. In the same vein, the moral right to be respected, for example, gives the holder the protected option to reproach those who do not respect it without further normative costs, say, of being justifiably *criticised*.[37]

There are further complications though. One might be justifiably criticised for how one has exercised one's right. Even though Aida has a right to speak freely, her friend, Birkin, can justifiably criticise Aida if she demeans Birkin without moral justification. The normative protection I elicited does not reach this kind of case. Aida has a right to Φ and she can be justifiably criticised for Φ-ing. However, there is a protective upshot: it is not permissible for others to *prevent* Aida from Φ-ing. This protective dimension is well captured by Jeremy Waldron's use of the 'right to do wrong'.[38] This is, moreover, a normative protection that Aida has regardless of how she uses her right.[39]

There are further complications. Some rights might not even offer this kind of preventive protection. Consider the case of valid but *immoral* exercises of power-rights. Aida validly promises Cecilia that she shall sell her house to Cecilia, but Aida has already promised the same house to Birkin. It can be argued that Aida could be justifiably criticised and prevented from exercising her power to promise towards Cecilia. This would refute the account of rights' protection I am arguing for. Even if this were true, there is, however, a normative upshot in Aida's landscape. She has new duties that arose from the

[37] I am inclined to adopt Leif Wenar's *several function theory*; see Wenar (n 27). I am particularly sympathetic towards Wenar's flexibility because, for him, rights are those incidents, or bundles of them, that when obtained are meant to fulfil at least one of the following six functions: *exemption, discretion, authorisation, protection, provision,* or *performance*.

[38] For a classic defence of this concept, see Jeremy Waldron, 'A Right to Do Wrong' (1981) 92 Ethics 21. For a critique of the 'right to do wrong', see William A Galston, 'On the Alleged Right to Do Wrong: A Response to Waldron' (1983) 92 Ethics 2, 320. For more contemporary defences of the 'right to do wrong', see David Enoch, 'A Right to Violate One's Duty' (2002) 21 Law and Philosophy 355; Ori J Herstein, 'Defending the Right To Do Wrong' (2012) 31 Law and Philosophy 343. For a defence of the existence of legal rights to do legal wrongs, which David Enoch argues against in his paper cited in this footnote, see OJ Herstein, 'A Legal Right to Do Legal Wrong' (2014) 34 Oxford Journal of Legal Studies 21.

[39] There are clear complications regarding '*lesser evil*' cases. These are cases where there is a significant amount of harm could be prevented by stopping someone from exercising her right. However, even in those cases, the right offers some kind of normative protection to its holder. For example, to be distinctively treated as a right-holder, or to use the right itself as a ground to criticise others' 'lesser evil' intervention.

exercising of her power. I believe that being protected by voluntarily creating new duties, even though some of them could be disvaluable for the right-holder, can be understood as a kind of normative protection.

To sum up, rights' normative protection can be realised in various ways. A right-holder is protected because (i) she gains the permission to do something, or (ii) she can justifiably escape from the liability related to her right's exercise;[40] or (iii) she cannot justifiably be prevented from exercising her right; or, only regarding power-rights, (iv) she has the ability to voluntarily gain new duties even though they could be disvaluable. I believe all rights share some or all these protections. But is there any difference between legal and non-legal rights?

1.1.5 Legal and Moral Rights

There is a clear need to distinguish between legal and moral rights.[41] The reason I have not done so until now is because I believe that both legal and moral rights share an essential core. There is no theory of moral rights and theory* of legal rights. Their core is the same. Legal and moral rights share the normative protective gist described in the last subsection. However, they do have numerous differences. Let's explore them, going from the least to the most significant.

There is a certain difference in their function in practical reasoning. Given that their *source* differs – ie. the enactment of a law or the recognition of a legal practice regarding legal rights and morality for moral rights – they differ in how and what they justify, say, their derivative rights or duties. There is much difference in the justified *consequences* of violating rights for third people. If one violates a legal right, one will be liable for a legal sanction, say, prison, economic penalties, compensation, restitution, and so on. If one violates a strict moral right, instead, one is liable for moral reproach. Violating a legal right does not secure the latter unless it is a further institutionalised moral right.[42] Lastly, there is much more difference regarding the implications of their value or disvalue. If having a moral right is all things considered disvaluable, some will say, it follows that the moral right does not exist.[43] Conversely, if

[40] Compare Daniel Viehoff's conceptualisation of the '*right to err*', Daniel Viehoff, 'Legitimate Injustice and Acting for Others' (2022) 50 Philosophy & Public Affairs 301.

[41] Given that the thesis is not devoted to assessing the value or existence of other rights rather than those included in these two classes, I will only trace the distinction between these.

[42] One could perfectly argue that to violate legal rights necessarily implies third parties justified moral criticism. Perhaps the idea behind this is that the violator is not respecting a democratic decision, a reasonable or legitimate administrative decision, or a legitimate, authoritative judicial one. However, legitimacy, validity, or however one may call it, must have a place for the justified moral reproach to obtain. Moreover, one could reasonably argue that even if a moral justification obtains, the object of the reproach disrespects authority or the community itself, not the violated legal right-holder.

[43] *Conventional moral rights* can be an exception to this. Consider the case of *immoral promises*. They might exist even if they are disvaluable. Imagine you promise to your 17-year-old child that you will vote for a disgraceful Presidential candidate – who your child is obsessed with – if she is accepted to study Law at Balliol. Although your child has a disvaluable moral right, yet there is reason to believe she has it. Seana V. Shiffrin has contrarily argued that immoral promises are 'void *ab initio*'; Seana

having a legal right is all things considered disvaluable, it does *not* follow that the legal right does not exist, although it illustrates that there is a decisive reason for not having it.

Yet their distinction must be highlighted regarding the relation between people's *beliefs* and their *validity*. While legal rights' validity depends greatly on the beliefs of certain people, whether some recognise them, moral rights, at least at the fundamental level, do *not* depend on beliefs.[44] This is why one could reasonably assert that although a whole society recognises the validity of a moral right to abortion, we cannot infer from this that a legal right exists. To infer the contrary is also ill-grounded. Another interesting point rests on whether *mistaken beliefs* in the existence and validity of a right, which does not exist or is not valid can trigger the same protective force. The question is too large to be addressed here. However, I will address it in the thesis when it is due.

In short, moral and legal rights, albeit different, share the conceptual core elicited by this section. They are both normative objects that protect their holders. How and to what extent rights protect their holders' decisions is disputed. WT and IT differ in describing rights' essential functions. However, they agree on the protective essential feature.

1.2 The Value of Right-Holding and the Standard Picture of Rights

1.2.1 The Holder-Relative and Non-Instrumental Value of Right-Holding

The peculiarity of rights is that they are good for whoever holds one of them. This is exactly what all accounts of rights mentioned here, and most of the non-mentioned, imply or assert when defining rights. For all of them, having a right is something of value for the holder. Following the thoughts of the last section, *holding* one of those normative protective objects should be of value to the holder. This follows from the fact that normative protection should be of value. Moreover, this talks about an *inherent force* that these objects have.[45] In the sense that they have it regardless of whether the holder uses it unwisely or non-rightly.

Valentine Shiffrin, *Speech Matters. On Lying, Morality, and the Law* (Princeton University Press 2014) footnote 48, 34. For the complete argument, see Seana Valentine Shiffrin, 'Immoral, Conflicting, and Redundant Promises' in R Jay Wallace, Rahul Kumar and Samuel Freeman (eds), *Reasons and Recognition: Essays on the Philosophy of T.M. Scanlon* (Oxford University Press 2011).

[44] Some derivative moral rights depend on the fact that some expectations have been formed. Furthermore, conventional accounts of certain parts of morality and of its deontic concepts cast even more doubts. David Owens asserts, for example, that '[t]he norms of friendship … *will not bind unless they are acknowledged*, at least between Tim and myself and probably also in the wider community'. David Owens, *Bound by Convention: Obligation and Social Rules* (1st edn, Oxford University Press 2022) 78 [emphasis added].

[45] Jeremy Waldron refers to this as the *special force* of rights; see Jeremy Waldron (ed), *Theories of Rights* (Oxford University Press 1984) 15.

This is the normative magic of rights. Having a right protects the holder by giving him a title. Note that the rights' force is not only realised when the holders use their titles. Certainly, they allow their holders to do things. But before doing any of them, their holders are already charged with this force. Certainly, one can decide to actualise this normative protection, but having this option is already of value.

Rights, thus, empower their holders to achieve the content in case they desire to do it. Rights also protect their holders from being disabled by third parties to actualise the rights' content or, on the contrary, oblige third parties to support this actualisation.[46] For Robert Nozick, 'rights form a protective bastion enabling an individual to achieve *his own ends in a life he shapes himself*; and that, Nozick thinks, is the individual's way of giving meaning to life'.[47] This seems to necessarily make right-holding *of holder-relative, non-instrumental value*.[48] In other words, their *holder-relative* value is already realised because the holder has the possibility to protectedly use it. The value is *non-instrumental*. It does not depend on the consequences of the exercise. This is exactly what *justifies* rights' existence.

1.2.2 The Standard Picture of Rights

I claim that this view about the inherent force of rights, and its holder-relative, non-instrumental value, is shared by what I call *Standard Picture of Rights* (hereinafter, SPR). This claim will be the touchstone of the present thesis. I will use SPR as a metaphoric figure that consists of all those rights-theorists who share this view about rights.[49] I ascribe to SPR the following twofold claim regarding the value of right-holding. I call it the *Right-Holding as an Enhancer Assumption*. Thus, SPR assumes either that right-holding is *necessarily* holder-relative, non-instrumentally *valuable* (*Necessary Value Horn*), or that right-holding *cannot* be holder-relative, non-instrumentally *disvaluable* (*Impossible Disvalue Horn*). But what is the Standard Picture? Let's explore this concept further.

Right-holding is largely grounded on its contribution to the holder's *freedom*. I agree with Nozick; there is value in being able to shape our lives freely.[50] But more importantly, I think, there is value in

[46] This can be understood respectively as the *permissive* and *prohibitive* functions of rights; see William A Edmundson, *An Introduction to Rights* (2nd edn, Cambridge University Press 2012) xi.

[47] This is what H. L. A. Hart understood of Nozick's account of rights; see HLA Hart, 'Between Utility and Rights' (1979) 79 Columbia Law Review 828, 835 [emphasis added]. To expand on Nozick's idea of rights, see Nozick (n 5) 28–29, 48–50.

[48] To understand better the distinction between extrinsic and intrinsic value, and instrumental and non-instrumental value, see Christine M Korsgaard, 'Two Distinctions in Goodness' (1983) 92 The Philosophical Review 169. Some people, such as Joseph Raz, still use intrinsic value for what I consider non-instrumental value; see, for example, Raz, *Ethics in the Public Domain* (n 6) Chapter 2. Shelley Kagan, however, argues that there are pragmatic reasons to keep naming *this* value as intrinsic; see S Kagan, 'Rethinking Intrinsic Value' in Toni Rønnow-Rasmussen and Michael J Zimmerman (eds), *Recent Work on Intrinsic Value*, vol 17 (Springer Netherlands 2005).

[49] Joseph Raz is a blurry exception to SPR. See 2.2.3.

[50] The literature on *transformative experiences* might be useful here. Farbod Aklhagi, for example, argues that we have a *right to revelatory autonomy*; see Farbod Akhlaghi, 'Transformative Experience and the Right to Revelatory Autonomy' (2023) 83 Analysis 3.

being free in shaping how we *understand* our lives. In this vein, rights' normative force enhances the right-holders' *autonomy* or *status*.[51] Having a right to education protects its holder in obtaining education, holding, say, the state under the duty to provide it. The holder's autonomy and dignity are enhanced because she holds the right. A political community that has a moral right to self-determination has the protected option to hold a third party to recognise the right-holders' statehood. Having this right already enhances the holder. Rights are non-instrumentally valuable for their holders by virtue of the protective force they have. As Alon Harel asserts, describing the non-reductionist view of rights, the enhancement of, say, autonomy *not* only depends on the things one can protectedly do by *exercising* the right, but also depends on 'protecting these activities *for the sake of promoting the relevant values*'.[52] Let's review how the Standard Picture has explained this seeming value of right-holding.

Joel Feinberg famously argues that a world without rights would be a deeply morally impoverished one.[53] For him, rights are valid claims.[54] Feinberg finds in the activity of claiming, which rights provide, the necessary vehicle for *mutual recognition*. In other words, we can engage in interpersonal morality and obtain the invaluable benefits that morality has because we possess the concept of claiming. Self-respect, moreover, at least the normatively thick kind, could not be found were people to remain rights-free. Duties by themselves, without their correlative rights, for Feinberg, could not do this heavy lifting.[55] The upshot of this view is that rights are intimately related to those deepest human values. Personhood necessitates rights. Certainly, *non-rightsous*[56] and non-dutiful attitudes and actions are also necessary to understand our moral transactions.[57] However, the value enabled by rights is what explains their justification. Note that this value is non-instrumental. Rights are of holder-relative value even if they cause the worst possible consequences.

Following Feinberg's thought, right-holding is necessary for being recognised as agents. This is what makes right-holding valuable. As I mentioned, this is the case because contributes to the value of holders' autonomy or status. H. L. A. Hart explains rights in relation to how they contribute to the autonomy of their holders. For him, rights are justifications to make choices, although they limit other

[51] I purposely avoid the word 'dignity' because whether the status is legal or non-legal will depend on the nature of the right.
[52] Alon Harel, 'Theories of Rights' in Martin P Golding and William A Edmundson (eds), *The Blackwell Guide to the Philosophy of Law and Legal Theory* (1st edn, Wiley 2005) 202.
[53] Feinberg, 'The Nature and Value of Rights' (n 2).
[54] (ibid 253–254.
[55] Joel Feinberg, 'Duties, Rights, and Claims' (1966) 3 American Philosophical Quarterly 137.
[56] Frances Kamm differentiates between *rightsousness* and *righteousness*; see FM Kamm, *Rights and Their Limits: In Theory, Cases, and Pandemics* (1st edn, Oxford University Press 2022) xi.
[57] Feinberg is here referring to actions, attitudes, and so on, moved by reasons such as love, pity, or mercy. Feinberg, 'Duties, Rights, and Claims' (n 55) 143–144. Love, albeit morally charged, cannot be explained only by dutiful motivations. I will defend this position in 5.

people's freedom.[58] Right-holders, for Hart, are small-scale sovereigns. Thus, although sovereigns can do things wrong with their discretion, holding the discretion seems to be, for Hart, of non-instrumental value for them. For Hart, I think, they are freer *because they have the right*.

Others ground right-holding's value on its contribution to the status of the holder. Ronald Dworkin, for instance, argues that rights have the *value of trumping* decisions grounded in utilitarian reasons, safeguarding individuals from collective reasons.[59] Right-holding is needed to be *treated seriously*. Our status seems to depend on right-holding. Frances Kamm conceives rights as the property of human beings that non-instrumentally contribute to their moral status. For Kamm, status recognition is explained by right-holding. As she asserts, 'his *having the right* could be the mark of his being the sort of entity whose interests and desires (e.g. to have his rights recognized) should be given serious consideration'.[60] This claim is also supported by Thomas Nagel, who argues that are intrinsically valuable objects because of the sense of inviolability they provide.[61]

All these references help me in building up the Standard Picture of Rights. They all share the assumption about the holder-relative, non-instrumental value of right-holding. And this value is necessarily obtained when the right 'behaves' properly. The necessity lies in the fact that if some property of the right obtains, the right will necessarily be of non-instrumental value for its holder. This property could differ whether you are a will theorist, interest theorist, or any other kind of rights-theorist. But the point remains the same. For SPR, whatever the content of that property one thinks must obtain for the right to be a proper right, if the property obtains, right-holding shall be of non-instrumental value for its holder.

Note that one can validly offer arguments about how rights can be of holder-relative, instrumental disvalue. For example, one can *exercise* a legal or moral right to do legal or moral wrongs, such as a right to excessive gambling, a right to excessive smoking, or a right to consume prostitution. Thus, we might assume that by exercising one of these right one is breaching duties to oneself or to others. This, we may agree, is morally bad for the exerciser. One can even obtain instrumental disvalue using a right that, analytically speaking, is meant to create value. This can be the case because one has used one's right badly. One can unwisely use one's rights, or even more disvaluable, one can morally or legally *abuse*

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[58] Hart thinks that '[i]t is a very important feature of a moral right that the possessor of it is conceived as having a moral justification for limiting the freedom of another …'; Hart, 'Are There Any Natural Rights?' (n 31) 178.

[59] Ronald Dworkin, 'Is There a Right to Pornography?' (1981) 1 Oxford Journal of Legal Studies 177, 177; Dworkin, 'Rights as Trumps' (n 4). The intellectual rivalry between Hart and Dworkin can be also explained in the realm of rights. While Hart argues that (if there are any natural rights) the ultimate right is the *equal right to be free*. On the other hand, Dworkin firmly argues that this is the right to *equal concern and respect*; see, respectively, Hart, 'Are There Any Natural Rights?' (n 31); Ronald Dworkin, *Taking Rights Seriously* (1st edn, Harvard University Press 1978) Chapters 6, 7, and 12.

[60] FM Kamm, 'Rights' in Jules L Coleman, Kenneth Einar Himma and Scott J Shapiro (eds), *The Oxford Handbook of Jurisprudence and Philosophy of Law* (1st edn, Oxford University Press 2004) 494.

[61] Nagel (n 3) 36–40.

one's moral or legal right. In John Gardner's words, a right-holder can be 'a *stickler* for one's rights'.[62] One can exercise his rights unjustifiably or even inexcusably. This exercise might even blemish the status of the right-holder instead of enhancing it.

However, these arguments highlight an instrumental disvalue that exercising one's right can produce for the holder. The lesson is that one should use one's rights with prudence to extract most of their value. But nothing is objected regarding the assumed value or justification of right-holding. Right-holding, even for those who accept the lesson, continues to be necessarily good for the holder.

This last idea implies what I call the Necessary Value Horn of the SPR's assumption. In other words, this is the idea that right-holding is necessarily of value for the holder. But one could say that, for SPR, right-holding can be of neutral value; neither good nor bad. This is what I call the Impossible Disvalue Horn. That is, right-holding cannot be non-instrumentally disvaluable for the holder. These two horns form the *Right-Holding as an Enhancer Assumption*:

> The Standard Picture of Rights assumes either that: (I) right-holding *necessarily* is of holder-relative, non-instrumental disvalue (Necessary Value Horn); or (II) right-holding *cannot* be of holder-relative, non-instrumental disvalue (Impossible Disvalue Horn)

I claim that this is widely assumed by philosophers of law and morality. Some of them have explicitly defended that view when explaining the value of rights – eg. Feinberg, Kamm, Dworkin, or Nagel. Others have implicitly assumed this position when explaining rights's function and concept – eg. Hart, or Raz. Allocating Raz as part of SPR might be understood as an unjust move. And there is good reason to think this way. Let me briefly analyse why this is the case, but also why Raz can still be justly considered a SPR-theorist.

1.2.3 Is Raz an Enemy of the Standard Picture?

The Standard Picture certainly has its opponents. Some of them were highlighted in the introduction of the thesis when eliciting what I will not argue. The point is that most of them have argued against other traits of the Standard Picture, and for different kinds of reasons. However, Joseph Raz is closer to me in this respect. He is an opponent that, albeit blurrily, has used similar reasons to highlight similar worries I will also offer here regarding rights and right-holding's value. Let's elicit some of them.

[62] John Gardner, *Torts and Other Wrongs* (First published in paperback 2021, Oxford University Press 2021) 17 [emphasis added]. I thank Hasan Dindjer and Massimo Renzo to point out this feature of rights-exercising.

First, Raz accepts that there are rights grounded on *other interests* rather than those of the holder. Sometimes, a right-holder's interest in Φ is insufficient to ground her right to Φ. In this kind of cases, right-holding needs to serve the interests of other persons, or to preserve 'certain political culture, … the protection of various public or even collective goods'.[63] The right to freedom of speech, according to Raz, needs to be grounded on the value it has in the preservation of independent speech for society rather than the value it tracks for the speaker.[64] The right of journalists not to disclose the source of information, derived from the right to freedom of expression, is also grounded on the interest that society has to be well-informed. Take also the example of property rights. Even though the legitimate owner of a car is completely disinterested in preserving it – he actually hates it and would like to be stolen – unless she would have formally waived it, she yet has a property right towards it. In this case, the right is still grounded on the societal interest that she has her right *protected*.[65] This contradicts, at first glance, the twofold argument I am ascribing to SPR. That is, the Right-Holding as an Enhancer Assumption.

Second, in *Liberating Duties,* Raz describes and explicitly objects to what he calls the *orthodoxy* of rights.[66] In Raz's terms, the orthodoxy defends the idea that rights are intrinsically good for their holders, and obligations intrinsically bad for their holders. This is basically a rewording of what I call the Standard Picture. In that paper, he not only liberates duties from the clutches of orthodoxy, but he also pencils a way to escape the orthodoxy regarding rights' assumed holder-relative value. He asserts, '[w]hile all rights are to benefits, it does not follow that it is always a benefit to have a right. *Sometimes it may be better for a person not to have a right to a benefit*'.[67]

I believe that this move is as sharp as Raz's moves. One shall note in this thesis that I endorse this argumentative strand. Notwithstanding this, Raz's argument is still blurry. In the next section, I shall argue that he liberates duties from being the intrinsic fetters that the orthodoxy, or SPR, assumes they are. But he falls short regarding rights. Let me quickly explain it by contrasting the two claims I attributed to him in the last paragraphs. First, although Raz argues that rights can be ultimately grounded on third parties' interests, his claim is *conjunctive*. For the right to be justified, it cannot *disserve* the right-holder's interests. As he affirms, 'right-holders' interests are *only part* of the justifying reason for many rights. The interests of others matter too. They matter, however, only when they are served *by serving the right-holders' interests*'.[68] With this claim, Raz explains why rights sometimes can be justified in the interest of

[63] Joseph Raz, *The Morality of Freedom* (first published 1986, Clarendon Press 2009) 261.
[64] Raz, *Ethics in the Public Domain* (n 6) 54.
[65] ibid 46. John Gardner also argues this. He offers the example of someone whose old clothes do not have any *use* nor *identification-value to* the holder, yet she has a property right over her old shirt. Her right-holding is grounded on the 'contribution … to the perpetuation of a system of optimal use-value coupled … with optimal identification-value'; John Gardner, *Offences and Defences: Selected Essays in the Philosophy of Criminal Law* (Oxford University Press 2007) 12.
[66] Raz, *Ethics in the Public Domain* (n 6) Chapter 2.
[67] ibid 35.
[68] ibid 51.

third parties. He does not argue, however, that right-holding can be bad for the holder and still be justified. He asserts, instead, that rights sometimes serve *both*, or sometimes third parties are better served by the right.[69] Thus, SPR's value assumption remains untouched.

Second, in *Liberating Duties,* Raz clearly hints at the same general worry regarding SPR's assumption that I will elicit in this thesis. Basically, there are rights that are not good for their holders. But this does not say anything about whether right-holding can be non-instrumentally disvaluable. Moreover, he asserts that '[r]ights are, we *all* are used to thinking *always good*'.[70] He surely might have foreseen the argument I will offer, but he is clearly not endorsing it. Furthermore, when he asserts the quote I cited, he is restricting the scope of the argument to *non-morally thick* decisions in life, say, 'friendship, or love or some other special motive …'.[71]

One might note how indebted I am to Raz. I shall express my debt in full when ascribing to his account of the value of (some) obligations. I will argue that he succeeds in his intention of liberating duties. However, I cannot assert that he has liberated rights. Or that he would have liked to do it. Furthermore, he has remained too ambiguous concerning the value of rights and right-holding to call him an opponent of SPR in this regard. On the one hand, for Raz, rights are instrumentally valuable because they are useful. Rights, to some extent, are intermediate conclusions.[72] They are not those doing the ultimate grounding lifting. But deriving duties, or other rights, from rights is much easier than doing it from the very interests. One can do this without assessing the pedigree of the underlying interest. Rights, thus, promote a shared common culture that saves people time and ulterior disagreements.

On the other hand, for Raz, rights seem to be good candidates for being, in his terms, intrinsically valuable objects. As he asserts, '[rights] purpose is to develop and protect the autonomy of the agent'.[73] Although he advances a new way of conceiving rights' role, he is assertive in the necessity of rights for the production and understanding of value. As he puts it, 'rights play a central role as important ingredients in a mosaic of value-relations whose significance and implications cannot be spelled out except by reference to rights'.[74]

Given this, Raz's bold, argumentative dagger should not yet stop us from arguing that his account of rights shares the core of the Standard Picture's claim regarding rights. SPR assumes that right-holding either necessarily valuably protects the holders' autonomy or dignity or at least that right-holding cannot

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[69] As Raz asserts, '[t]he interest of John in the actions which promote Mary's well-being is relevant if it is served through the fact that Mary's interest is thereby served'; see Raz, *The Morality of Freedom* (n 32) 248. Raz also asserts, 'rights are less intimately engaged with our life … [o]ur duties define our identities more profoundly than do our rights.'; Joseph Raz, *Value, Respect, and Attachment* (Cambridge University Press 2001) 22.

[70] Raz, *Ethics in the Public Domain* (n 6) 43.

[71] ibid 35. This is related to some of my arguments; see, especially, 5.3.

[72] Raz, *The Morality of Freedom* (n 32) 281–282.

[73] Joseph Raz, *The Authority of Law: Essays on Law and Morality* (2nd edn, Oxford Univ Press 2002) 266.

[74] Raz, *The Morality of Freedom* (n 32) 255.

neglect the holder's underlying values. For Raz, we can assume, a world without legal rights would still be 'poor, nasty, brutish, and short …'[75], and a world without moral rights, at least some of them, does not exist. For him, rights are valuable either because they enable other values or because they are *valuable by themselves*.[76] This is precisely grounded in how he and SPR believe that right-holding non-instrumentally contributes to the holders' lives.

1.3 Valuable Obligations

As I tried to show in the last section, for SPR, rights are ultimately enhancers of one's freedom. Your desire is better protected by holding rights. At least they cannot unprotect the holder. This is what SPR assumes. In other words, having a right to Φ implies having a reason backing up your desire to Φ. So, in case you want to Φ, you can do it protectedly. On the contrary, duty-holding has been understood as a *burden* for the holder. Having obligations restricts one's freedom. This is because to have an obligation to Φ, the argument goes, implies that one ought Φ-ing, even if one does not want to Φ. While rights are *optional*, duties are *required*.

As Alan Gewirth affirms, '[r]ights are to duties as benefits are to burdens …'.[77] He adds, '[d]uties … are justified burdens on the part of the respondent or duty-bearer: they *restrict his freedom* by requiring that he conduct himself in ways that directly benefit not himself but rather the right-holder'.[78] For some people, duties require their holder to conform to a protected reason; you have a first-order reason to pay the money back and a second-order one not to conform reason against paying.[79] Given that one ought to pay one's loan, all other reasons to do otherwise are disabled from regarding them. It does not mean, however, that you are physically impelled to walk these excluded paths. One can certainly opt not to return the money, but only at the high and unpleasant *normative cost* of corrupting one's status. This is a normative burden mentioned by Gewirth. It is what arguably makes obligations *fetters* for their holders.

J. L. Mackie also accepts this twofold conviction about the value of rights and duties when he asserts, '[r]ights are something that we may well want to have; duties are *irksome*'.[80] He then asserts in a

[75] Thomas Hobbes, *Leviathan. Or the Matter, Forme and Power of a Commonwealth Ecclesiastical and Civil* (Michael Oakeshott ed, first published 1651, Basil Blackwell 1946) 82.

[76] See Joseph Raz, *The Practice of Value* (R Jay Wallace ed, Rev ed, Clarendon Press ; Oxford University Press 2005) 34–35. In those pages of *The Practice of Value*, he also argues that rights' value does not depend on social practices.

[77] Alan Gewirth, 'Why Rights Are Indispensable' (1986) XCV Mind 329, 333.

[78] ibid.

[79] This is Raz's concept of duty as a protected reason; see Raz, *The Authority of Law* (n 73) 18.

[80] John Leslie Mackie, 'Can There Be a Right-Based Moral Theory?' in Jeremy Waldron (ed), *Theories of Rights* (Oxford University Press 1990) 171.

stronger tone, '*[d]uty for duty's sake is absurd*, but *rights for their own sake are not*'.[81] Both Mackie and Gewirth's statements neatly reflect the common-sense assumption accepted by SPR about the seeming, necessary and holder-relative *non-instrumental disvalue* of duty-holding, and the necessary and holder-relative non-instrumental value of having rights. Let's call this way of conceiving obligations' role and value, the *Duty-Holding as Fetter View*:

SPR assumes that duty-holding *cannot* be non-instrumentally *valuable for their holders*

Is that all? It seems to me that there are some underlying complications to address. Obligations can be *instrumentally* valuable for their holders. Exercising a noble duty can produce good consequences for the holder. The fact that you are obliged to use the seat belt means that you will be more likely to use it. Therefore, you will have less chances to die in a car accident. Assuming that normative requirements have any power, duties should give us reason to believe that it is more likely that the holder will do the content of it. We may agree that this is true, at least, for legal obligations. The institutional mechanism seems to assure the incentive. One can, however, offer a similar argument regarding moral rights. Instead of the institutional sanction, the breacher obtains moral reproach.

1.3.1 A Liberated View of Obligations

Notwithstanding the potential success of this argument, it is not the argumentative vein chosen for this thesis. The underlying question that matters here is whether normative objects, on themselves, can be either non-instrumentally valuable or disvaluable for their holders. That is a value that its realisation does not depend on the consequences of exercising the right. Can duty-holding be valuable in a similar non-instrumental way right-holding, for the Standard Picture, can? I believe they can. Some obligations are valuable because they contribute to the value of our most important relationships. Friendship, compatriots, family relationships, criminal defendant-officials, colleagues, classmates, teacher-student, and so on are instances of these kinds of *intrinsically valuable relationships*. The point is that to be part of any of these special bonds, the participants must hold special duties. One will not befriend someone if one wishes to remain duty-free towards one's friend'. Both the *existence* and *value* of these relationships depend on the existence of some obligations between the would-be participants. We may call these special obligations either *associative* or *relationship* obligations.[82]

[81] ibid [emphasis added].

[82] Although associative duties may refer to a more general phenomena, both words help me eliciting my point. There is vast literature on the topic of *associative duties*; see Michael O Hardimon, 'Role Obligations' (1994) 91 The Journal of Philosophy

Joseph Raz famously defends this view. He proposes that some obligations are intrinsically valuable.[83] According to Raz, although there is a sense in which obligations constrain action – by excluding reasons[84] – they can also be intrinsically enhancing for the duty-bearer.[85] For him, some obligations constitute our intrinsically valuable relationships. Our interests, particularly our interest in participating in this kind of relationship, could not be satisfied were we to remain duty-free. For Raz, this is *not only* a clarification of which obligations can be intrinsically valuable and which cannot. We may infer he is pointing out that this is the feature that best explains the nature of obligations. I call this perspective, inspired by Raz's work on the topic, the Liberated View of Obligations (LVO).

One should agree that special relationships such as friendship are intrinsically valuable. That is, they are valuable by themselves and regardless of any consequence of practising it. The fact that friends are *distinctively accountable* towards each other is what makes friendship intrinsically valuable. Friendship obligations, whichever these are, say, the duty to be loyal, truthful, and so on, are valuable because they non-instrumentally contribute to obtaining the accountability dimension. Friendship, for example, besides being instrumentally good or bad in virtue of its costs and benefits, is itself good because of its *reason-giving dimension*. The fact that friends can give each other *special reasons*, ie. that the reasons they give each other have a distinctive role in their practical reasoning, and that they both value them in that way, is itself of value.

David Owens explains the value of friendship in a similar way. He argues that '[o]f course it would be even better if [friends] could help me, hang out with me, etc., but the value of these involvements does not turn on this'.[86] The value of these relationships depends, instead, on their special deontic character. This is proportioned by the obligations that participants have voluntarily agreed to hold. Therefore, it is not the case that obligations are valuable as necessary preconditions for the relationship to obtain. They are so because they non-instrumentally contribute to the intrinsic value of the relationship. Thus, as Owens puts it, 'at least in the context of these involvements, *obligation is valuable for its own sake*'.[87]

This should give us an initial reason to doubt the soundness of SPR value judgement. Its claim regarding the value of duty-holding – the Duty-Holding as Fetter View – is misguided. Duty-holding, at

333; Andrew Mason, 'Special Obligations to Compatriots' (1997) 107 Ethics 427; Seth Lazar, 'The Justification of Associative Duties' (2016) 13 Journal of Moral Philosophy 28. There is a less vast literature on the topic of *relationship obligations*; see, for example, David Owens, 'II—David Owens: The Value of Duty' (2012) 86 Aristotelian Society Supplementary Volume 199, 200–203. David Owens also calls these special obligations, *obligations of involvement*; see Owens, *Bound by Convention* (n 44) Chapter 2.

[83] Raz, 'Liberating Duties' (n 9).

[84] Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Reprinted, Oxford Univ Press 2002) 17.

[85] Raz, 'Liberating Duties' (n 9) 18–21.

[86] David Owens, *Bound by Convention: Obligation and Social Rules* (1st edn, Oxford University Press 2022) 40.

[87] ibid 44.

least related to some duties, *can* be of holder-relative, non-instrumental value. Thus, the Liberated View of Obligations contradicts the Duty-Holding as Fetter View. I think this gives us a reason to suspect the soundness of SPR's whole enterprise. Joseph Raz is especially helpful in raising an objection to how SPR understands the value of duty-holding. But, as I mentioned, he does not do too much to answer the question about the holder-relative disvalue of right-holding. If having a duty can be non-instrumentally valuable for its holders, can having a right be similarly disvaluable for its holder?

1.4 Disvaluable Rights

The attention moves to rights again. Can SPR be wrong about the value of rights? Can right-holding realise *disvalue* for their holders in the same way duty-holding can realise holder-relative value? The answer to this question will be the content of the rest of this thesis. My intuition is that right-holding can indeed be non-instrumentally disvaluable. That is, just having a right, independent of the consequences its exercise might produce for the holder, can be disvaluable for its holder. Before arriving let me briefly recap the claims I have described until now:

> (1) SPR assumes the Right-Holding as an Enhancer View: (i) right-holding is necessarily of holder-relative, non-instrumental value (Necessary Value Horn); or (ii) right-holding cannot be of holder-relative, non-instrumental disvaluable (Impossible Disvalue Horn)
>
> (2) SPR assumes that duty-holding cannot be of holder-relative, non-instrumental value (Duty-Holding as Fetter View)
>
> (3) Given the soundness of the Liberated View of Obligations, there is a good reason to believe that SPR errs in assuming the Duty-Holding as Fetter View

Is there a good reason to believe that not only (2) but also (1) is false? At first glance, it seems awkward to believe that right-holding could be bad for the holders. Why on earth would a normative protection be disvaluable for the protected person? Rights are important for us. It is this inherent normative force of rights that pushes SPR to assume that having a right cannot at least be detrimental for its holder. Furthermore, following SPR, rights are shields or enhancers of holders' autonomy and dignity. But what if it could be the case that having a right is detrimental to any of these two unconditioned values? What if just having a legal right would distort our desired autonomous way of making our most transcendental decisions? Or would a legal right disable its holder from acquiring the required status to speak robustly?

Or, even more dramatically, if having a right would be self-defeating? *The* claim is that having a right can deeply undermine both its holder's autonomy and dignity in these last three ways – although each example has its complications. Each of the last three questions represents a right that realises disvalue in a different way. I call these types of rights: Distorting Rights, Disabling Rights, and Self-Defeating Rights (see Table 1.). I will present an example for each of these classes of rights. As one can note in Table 1., the examples are related to three of the most transcendental dimensions of our lives: *death*, *speech*, and *love*. The first two, respectively, are examples of legal rights: the Legal Right to Die,[88] and the Criminal Defendant's Legal Right to Lie.[89] They are recognised to varying degrees by multiple legal systems. The candidate under consideration is the Children's Moral Right to be Loved.[90]

The first aim of the following chapters is to disprove the value arguably attached to these specific rights. In essence, in cases where my argument applies, the holder-relative disvalue obtained by holding the right is a reason to wipe the right off. The strength of this reason will depend on the nature of the disvalue. Note that this claim has different implications depending on whether the right is moral or legal.[91] It is crucial to emphasise how my claim, if true, affects the existence of each of these two types of rights. In the case of *legal rights*, the argument differs. Even if having a legal right to Φ is detrimental for the person holding that right, the legal right can still exist, although there would be a decisive reason to eliminate it. Regarding *moral rights*, the stringency of the disvalue dictates the right's existence.[92] If a statement (p) claims that agents have a moral right to Φ, but it is then recognised that if the agents had a moral right to Φ it would entail an all things considered disvalue, then p cannot be true. Consequently, agents do not have a moral right to Φ.

The second aim behind these examples is to show the extensional inadequacy of the claim about the non-instrumental value of rights defended by SPR. I mentioned that some people have argued that we have rights to do wrong.[93] My take will suggest that sometimes a '*right can do you wrong*'. This is a metaphorical expression. Certainly, inanimate entities 'cannot do' anything. However, they can still support the disabling, distorting, or defeating of a certain holder's interest or option. People say that duties are fetters because they *restrict* their holders. Certainly, duties *do nothing*. They also are immaterial objects. My point is that rights can entail this same holder-relative disvalue. The examples will show that, at least in these three instances, having a right can be non-instrumentally disvaluable for its holder; that it

[88] See 2.
[89] See 3.
[90] See 4.
[91] See 2.1.5.
[92] Compare, however, footnote 44 in 2.1.5.
[93] See footnote 38 in 2.1.5.

can be the case that a right-holder's autonomy or status could be worse off *because* of a non-deviant function of the very right.

Table 1.

Type	*Distorting Rights*	*Disabling Rights*	*Self-defeating Rights*
Example	*(People's) Legal Right to Die*	*(Criminal Defendant's) Legal Right to Lie*	*(Children's) Moral Right to Be Loved*

2. Distorting Rights: The Legal Right to Die

'Life and death: they are one, at core entwined'

Poems Praise, R. M. Rilke[94]

Death is part of our lives. Having the option of dying is a precondition for humans to be alive.[95] Only if it is true that I will die, it is also true that I am alive. We can be sure that the road to our death is not always a bed of roses. Some people do not enjoy this path. In 2022, 13,241 people decided to ask for physician-assisted suicide in Canada.[96] In 3.5% of these cases, natural death was not reasonably foreseeable.[97] In Switzerland, the euthanasia association *Exit* witnessed an 11% increase in the number of members in 2023.[98] *Exit* is only one of four Swiss voluntary assisted-dying organisations. Lastly, in the Netherlands, there were 8,720 cases of voluntary assisted suicide in 2022, compared to the 7,666 notifications in 2021.[99]

Besides how alarming these numbers might sound, my concern here is their normative dimension. All these countries have one thing in common: they all have provided their citizens with a legally protected option to request assistance in their suicide. This is understood by many as a legal right to physician-assisted suicide.[100] For the sake of simplicity, I will call it *Legal Right to Die*.[101] This right (hereinafter, LRTD) entails giving people the option to plan their death to the extent of asking a third person – a physician – to assist them in their suicide. LRTD benefits its holders because it enables them to have a painless and premeditated death. The right is active. It gives the holder the protected liberty to request assistance in her suicide. But attached to LRTD, there is another normative incident. The holder is entitled to legally claim assistance if needed. This, instead, is the passive facet of LRTD.

Physicians have a duty to fulfil an LRTD-holder's request for assistance in her suicide, even if they object to providing assistance. The duty includes referring the patient to another willing physician.

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[94] Rainer Maria Rilke, *Rilke On Love and Other Difficulties* (John JL Mood tr, Norton 2004) 83.

[95] God and angels might not need to have the option to die to exist. Humans do need it.

[96] Health Canada, 'Fourth Annual Report on Medical Assistance in Dying in Canada, 2022' (Minister of Health 2023) 2563–3643 20.

[97] ibid 20.

[98] SWI swissinfo.ch, 'Swiss Assisted Suicides Rose 11% in 2023' (*SWI swissinfo.ch*, 8 February 2024) <https://www.swissinfo.ch/eng/life-aging/swiss-assisted-suicides-rose-11-in-2023/49198616> accessed 6 August 2024.

[99] Regional Euthanasia Review Committees, 'Annual Report, 2022' (Regional Euthanasia Review Committees 2023).

[100] Carl Wellman, 'A Legal Right to Physician-Assisted Suicide Defended' (2003) 29 Social Theory and Practice 19.

[101] I am following some philosophers who have also called it in this way; see Cass R Sunstein, 'The Right to Die' (1997) 106 The Yale Law Journal 1123; Joseph Raz, 'Death in Our Life' (Oxford Legal Studies Research Paper No 25/2012; Columbia Public Law Research Paper No 12-305 2012).

If there are no other physicians to refer the patient to, objectors are obligated to assist. This aligns with the underlying principle of LRTD: giving people LRTD creates the necessity that at least *one* physician shall assist in the suicide of those people choosing to exercise LRTD. The state, which grants LRTD to citizens, is responsible for ensuring the protection of LRTD. This responsibility may be fulfiled differently depending on each country's legal practices and legislation. However, the overall point is that the option to exercise LRTD is normatively highly protected.

To narrow the discussion down, this chapter will only be interested in those cases where a *competent* and *conscious* person is asking for assistance in her suicide.[102] Thus, I am leaving aside two other important cases. One is the case in which the physician must decide whether to kill, either passively or actively, an unconscious and incompetent human, say, someone in a comatose or vegetative state. The assessment of this case depends on the legislative particularities of each country, but the common practice is to follow what the patient has willed when conscious and competent. The other case is one in which the person asking for the assistance of the physician is conscious but incompetent because she is in either a temporary or permanent disorderly mental state.

2.1 The Right-Holder-Oriented Justification

In 1997, Ronald Dworkin and other five cutting-edge philosophers published *The Philosophers Brief,* advocating for a constitutionally protected legal right to die in the United States.[103] They defend LRTD on the basis that it enhances personal freedom. The document cites the Supreme Court of the United States' decision in *Planned Parenthood v. Casey*, where the Court decided that the right to abortion was a constitutionally protected interest, arguing that citizens have the right to decide on matters 'involving the most intimate and personal choices a person may make in a lifetime, choices central to *personal dignity* and *autonomy*'.[104] For *The Philosophers Brief*, this is the same argument that underlies the justification of LRTD.

Other philosophers, such as Joseph Raz or Carl Wellman, have also defended the value of LRTD on similar grounds. In a nutshell, the protected option of being capable to determine *when* and *how* to die, these philosophers argue, contributes to the respect for our autonomy.[105] Allegedly, having this control over one's death makes the right-holder more author of her life. Something that enhances this should be

[102] I am following Ronald Dworkin's categorisation of euthanasia; see Ronald Dworkin, *Life's Dominion: An Argument About Abortion and Euthanasia* (Harper Collins 1993) 183–190.

[103] It is co-authored by Thomas Nagel, Robert Nozick, John Rawls, Judith Jarvis Thomson, and T.M. Scanlon; see Ronald Dworkin and others, 'Assisted Suicide: The Philosophers' Brief'. Interestingly, I conceive most of these authors to be the core of the Standard Picture of Rights.

[104] Dworkin and others (n 127); *Planned Parenthood of Southeastern Pennsylvania et al. v. Casey, Governor of Pennsylvania, et al.* (n 129) 851. [emphasis added]

[105] Wellman (n 100) 26–27; Raz, 'Death in Our Life' (n 101) 15–16.

of value. As Joseph Raz asserts, 'the ability to choose how and when one's life will end is valuable *in itself*'.[106] For these two authors, dignity is also protected by LRTD. As Carl Wellman puts it, 'there ought to be a legal right to physician-assisted suicide in order to enable qualified patients *to avoid unnecessary suffering* … [and] to enable qualified patients *to die with dignity*'.[107]

According to this literature, LRTD finds justification because it enhances both autonomy and dignity. We can sum up the justification of LRTD in the following way:

Right-Holder-Oriented Justification of the Legal Right to Die:

(1) Right-holding is justified if it is holder-relative valuable

(2) LRTD-holding enhances its holder autonomy whilst promoting the authorship of its holder's life

(3) LRTD-holding enhances, directly and indirectly, its holder's dignity

a. Directly, LRTD gives its holder the option to avoid suffering and the loss of dignity

b. Indirectly, LRTD enhances its holder's dignity whilst protecting her ability to choose how to end her life

(4) LRTD-holding is of holder-relative, non-instrumental value

(5) Therefore, LRTD-holding is justified

For this view, having LRTD is good for those who have it. I accept that there is an appeal in the premises. Regarding autonomy, if having LRTD *increases* the level of mastery one has over one's life, there is good reason to have LRTD. As the motto of a pro-LRTD organisation declares: '*My death, my decision*'.[108] Regarding dignity, I agree that lives can lose dignity to some extent. This makes the whole argument quite appealing. I agree that under certain conditions, physicians have strong reasons to assist in the suicide of patients. These conditions include the patient being in an undignified state, or when it can be ascertained that the state will inevitably become undignified.

Did I accept this Right-Holder-Oriented Justification? Not at all. LRTD does not *only* apply to cases where a holder's dignity is objectively impaired. An autonomous decision by an adult, even though the dignity of her life is not objectively impaired, can be a necessary and sufficient condition for exercising

[106] Raz, 'Death in Our Life' (n 103) 16.
[107] Wellman (n 100) 22–24. For an argument in favour of the moral permissibility of physician-assisted suicide, see FM Kamm, 'Five Easy Arguments for Assisted Suicide and the Objections of Velleman and Gorsuch' in FM Kamm, *Almost Over* (Oxford University Press 2020). Kamm grounds her claim on the elimination of physical suffering (ie. the patient' dignity). Moreover, in the same chapter, she offers an argument justifying the existence of a physician's duty to kill the patient.
[108] 'Home' (*My Death, My Decision*) <https://www.mydeath-mydecision.org.uk/> accessed 13 May 2024.

LRTD. This implies, for example, that a 25-year-old Swiss adult can claim assistance if she *desires* to have it. This is justified in how it fosters its holder autonomy. The Right-Holder-Oriented Justification captures this. The idea is that if autonomy is really protected in this way, dignity is indirectly and necessarily also protected.

It seems, then, that the Right-Holder-Oriented Justification does not require the dignity premise. One may argue that the fact that some regulations restrict LRTD to those cases where the dignity premise is met shows that this is necessary to justify LRTD. However, even if the premise of dignity were necessary for requesting and receiving assistance, it would be difficult to define dignity objectively. This leads to regulations that allow LRTD-holders to define dignity on a subjective basis. But even those can be hard cases. The point is that an LRTD-exerciser can *falsely believe* that her life is undignified, although it is not.

This leads to *slippery slope* arguments. Some argue that we should not have LRTD because it leads to a situation where people who should not use LRTD end up using it. In other words, giving LRTD to people would increase the chance of false positives. This is something the state would not want to encourage – an increase in the number of people who use LRTD that would not have used it had not LRTD been provided. This disvaluable consequence could occur for two reasons: first, because laws giving LRTD are very *hard to implement*, and second, because the number of people using LRTD may incentivise others to use it even if they don't meet the dignity condition.

However, I believe that this instrumental argument does not affect the Right-Holder-Oriented Justification. On the contrary, LRTD can be valuable because it contributes indirectly to their holders' dignity by protecting their autonomy. One can argue that our dignity is best enhanced when our autonomy is protected. Thus, even though LRTD may have negative consequences for others, as the slippery slope argument claims, just having it remains valuable for the right-holder in this indirect way.

Only if we can argue that LRTD-holders' autonomy is non-instrumentally worse off in virtue of having LRTD, we may conclude that there is a strong reason not to have LRTD. Additionally, if autonomy is reduced, dignity will also be indirectly so. In the rest of the chapter, I will offer an argument to show that this is the case with LRTD. This is why I will not discuss whether other instrumental and non-instrumental reasons can make LRTD all things considered valuable despite being non-instrumentally bad for the right-holder's autonomy. Maybe exercising LRTD is valuable because of the consequences it causes, the amount of suffering saved for the chooser, for her relatives, or friends, or because it enables other people rather than the chooser to change their views of death for the better.[109] Even if all this were true, the claim I will offer would still hold.

[109] This is actually the *enabling value* that Joseph Raz argues that LRTD entails; see Raz, 'Death in Our Life' (n 103) 20.

2.2 Effective Options, Autonomy, and Personal Meaning

Options, autonomy, and personal meaning are three interconnected concepts. My argument suggests that the range of options enabled by LRTD can distort the personal meaning that the right-holder associates with their own death. Given the *transcendental nature* of this aspect of one's life, LRTD undermines the level of autonomy we have in deciding whether to die or not. It is of value for the state to distort certain aspects of our lives, even to the extent of undermining people's autonomy. But I will claim that LRTD exceeds the permitted threshold. If this is correct, the Right-Holder-Oriented Justification is incorrect.

LRTD gives its holder the protection to choose to be assisted in her suicide. The right-holder, who we can also call the chooser, can permissibly ask for assistance, being assisted, and claim to have the assistance in case she is not provided with it. LRTD has a stringent, inherent normative force. It strongly protects its holder in choosing to make this wide spectrum of transcendental decisions. Moreover, to be given LRTD entails the unfolding of new options. One cannot be protectedly assisted in one's suicide unless one has the legal permission to do it. LRTD provides it.

The question is whether having this new option is good or bad for the holder's autonomy. But what exactly is *autonomy*, and why is it valuable to protect it? Autonomy appears to be an attribute that is better described as an adjective or adverb rather than a noun. We are more or less autonomous, and we do things more or less autonomously. Being masters of our lives is what makes us autonomous.[110] I am assuming that autonomy comes in degrees. While all individuals possess a basic form of autonomy by virtue of their capacity for practical reasoning, the amount of personal autonomy is directly linked to the level of authorship an individual maintains over their own life.[111] Someone whose life is, or who believes it to be, completely determined by external factors is not autonomous in a robust sense.[112] The point is that being able to decide what to do, and to explain why one did it, is an essential part of what makes us more or less autonomous.

Note that the *protection* of this mastery is also of value. Legal rights find their strongest justification when they serve to enhance the autonomy of their holders. I am not saying that legal rights can *only* be justified if they protect their holders' autonomy. What I am trying to highlight is that if just the existence of a legal right undermines the autonomy of the holder, there is a strong reason for not having it.

Autonomy and options are intimate bedfellows. Objects do not have options. Neither do non-human animals or newborn babies. Slaves, for example, have their personal autonomy completely

[110] Raz, *The Morality of Freedom* (n 32) 369.
[111] Joseph Raz distinguishes between (Kantian) *moral autonomy* (my weak sense) and *personal autonomy* (my robust sense); see ibid footnote 2, 370.
[112] I say in the 'robust sense' because the fact that a person has any belief is already proof that she is, in the weakest sense, morally autonomous.

impaired. Yet they have moral autonomy and they may even also have a fair amount of good opportunities. However, they are disabled from choosing amongst their menu of plans *independently*. Slaves cannot cope with options in the way free people can because they are coerced. Basically, slaves' opportunities are *not* optional because their independence is distorted by how restricted they are. Being able to opt independently is part of what makes us autonomous. Optionality, thus, is crucial for being autonomous.

Note that the protection of autonomy is also valuable if it assures our independence in giving personal meaning to our lives. Options have a starring role in this. The meaning we attach to our lives depends on the range and nature of the options we have. Every life brushstroke we do adjusts an already given set of options we have. We are certainly free in doing this. Moreover, sometimes we create new options. We can also create reasons to have options or give these reasons to other people. But we do it from a default landscape that is given. This landscape consists of the opportunities we have, either those protected or those that are not. Any new option added to this scenario will change the disposition of the landscape. Thus, the way we attach personal meaning to our lives will also change. While some changes will not affect the chooser's autonomy in how we give personal meaning to our lives, others will do.

We might conclude that optionality plays a distinctive role in fostering our autonomy. The addition of a new option, such as LRTD, should enhance one's autonomy by providing its holder more choice. As I just argued, there is an explanatory link between having more choices and the enhancement of one's autonomy. If this argument holds, it seems difficult to argue that LRTD can be bad for its holder's autonomy, as it increases the number of options available to the holder.

Philosophers, however, have argued that an option can undesirably *distort* the chooser's autonomy. We may recall some of the classic examples in decision theory and rational choice literature to illustrate that there are cases in which the nature of an option, having a new granted option, or having too many options, can be bad for the chooser's autonomy.[113] Given the nature of LRTD, I am interested in how a *new* option can undermine the chooser's autonomy. LRTD is institutionally given. And this is not an offering that people may or may not accept. Although using it might be optional, *having it is not*. Following this line of thought, life shows us that it is not always the case that having a new option incites the feeling we are – or contributes to actually be – '*more* authors' of our lives. A new effective option can do the contrary; new options can be a cost to the chooser's autonomy.

One might assume that the undesirability of an option is determined by how bad it is for the person making the choice, or by how wrong it is to exercise it. Smoking cigarettes is bad for us, whereas reading a book is good. Therefore, having the option to smoke makes us worse off than not having it. So,

[113] See Thomas C Schelling, *The Strategy of Conflict* (2nd edn, Harvard University Press 1990); Gerald Dworkin, 'Is More Choice Better than Less?' (1982) 7 Midwest Studies in Philosophy 47; and Kerah Gordon-Solmon, 'Why More Choice Is Sometimes Worse than Less' (2017) 36 Law and Philosophy 25.

it cannot be bad to have an option whose content is morally valuable. However, I want to make a different argument here. I do not see any necessary connection between the badness of the option's scenario, or of exercising it, and the non-instrumental disvalue it might entail just having it. An option can significantly enhance one's ability to create new life plans, or to generate countless valuable opportunities, and yet still reduce the autonomy of the chooser. Consider the following example.

> *Aida's Bionic Legs*: Aida has been in a car accident and suffered harm to her legs. While she will still be able to walk, she will not be able to participate in some of the activities she loves, such as playing good football or climbing big mountains. However, her doctor has recently returned from an AI and Medicine expo in Silicon Valley and purchased a pair of advanced bionic legs. In light of Aida's tragic situation, while she is still unconscious, the doctor decides to improve her quality of life by replacing her injured human legs for bionic ones. These new 'legs' are nearly identical to Aida's original legs, and no one will be able to tell the difference. The doctor explains that with these bionic legs, Aida will be able to do things she never imagined, such as climbing Mount Everest without assistance and playing football as well as Lionel Messi. However, in order to further protect Aida's autonomy, she will need to activate a switch to use the full capacities of the bionic legs. If they are turned off, even though she still has non-human legs, she will not be able to perform any extraordinary stuff.

My intuition is that something is seriously wrong with Aida's new landscape. Let's assume that the doctor acts justifiably, and focus on the new option Aida has: using the bionic legs. Let's call it the Bionic Option (BO). I believe that the fact that she now has an additional set of effective *great* options enabled by BO does not enhance Aida's autonomy. But, on the contrary, it reduces it. Before the bionic surgery, Aida had a wide range of options, though she could no longer play football well or climb extensively. She could live an average, good life. She could choose to change jobs for better pay, play the guitar for enjoyment, play football at a lower skill level, and do less climbing. With the introduction of BO, Aida's range of options changed completely. Now, in addition to the normal but good options she still has, Aida has a set of extraordinary, great options enabled by BO. She can, for example, play football extraordinarily good, or climb mountains as high as 8000 meters.

However, the nature of BO distorts the *meaning* of Aida's other normal and good options. BO is *sticky* enough to change the meaning of Aida's default scenario, even if she does not choose BO. By having BO, even if she does not choose it, Aida loses the scenario where she only chooses *her* normal, good options. By choosing to play football as an amateur, for example, Aida is also refusing to play exceptionally

well with her bionic legs. This is what I mean by stickiness. BO becomes glued to any other decision that Aida makes where she does not choose BO. In this sense, the stickiness of BO becomes as burdensome as a requirement. Although choosing BO might be optional, *its stickiness is non-optional*.[114]

Aida's default scenario changes with the appearance of a new, great, effective option. One should note that before the procedure, Aida had a deeply valuable option that was distorted. This was the option of painting her landscape and creating life plans without a bionic maximiser of great options. The distinctiveness is that Aida is less free in a world where her options are not stuck to BO. The personal meaning of Aida's life has been distorted in a way that she cannot escape from. Hence, in a world where Aida's personal meaning of her life has been distorted, Aida will feel she is *less* the author of her life.

One might argue that choosing BO can be beneficial for many other people rather than the chooser. This can perfectly be the case. BO might be all things considered justified. But the argument that BO enhances the chooser's autonomy could not be used as a justification. What I want to show is that the autonomy of the individual can be undermined, even with access to many great options. In such cases, the autonomy cost of BO would still be holder relative, but pro tanto disvaluable. This is a bullet that I have no problem biting. Furthermore, my argument, if sound, would succeed in proving that it is not necessary to rely on the merit of the new option to create the autonomy cost. It is not necessarily the case that having the protected option of, say, eating a burger, or smoking a cigarette, entails the disvalue I am describing. The point is that even the fact that I have an immensely great option, such as BO, can reduce the chooser's autonomy.

2.3 A Distorting Protection

I argued that some options, such as BO, given their nature and how they relate to your pre-existing set of options, can limit the chooser's autonomy. This move is crucial for my argument about LRTD. We can defeat the assumption that having more options is always good for the chooser. I argued that the personal meaning of our lives is formed according to how our options are related. Moreover, doing it autonomously is of deep value. A new option will always somehow change the meaning of older options. But the point is whether this distortion is valuable, neutral, or disvaluable for the agent. I believe that giving people LRTD undermines its holders' autonomy. Basically, although optional, LRTD can be as pressing as the heaviest of our burdens. Given what is at stake, whether to live or to die, having LRTD becomes non-instrumentally disvaluable.

[114] For an argument about how LRTD's absence can be distortive, Jonathan Dancy, 'Are There Organic Unities?' (2003) 113 Ethics 629, 205.

LRTD is an option created by a third person backed up by a protected reason. Let me unpack this. First, LRTD is provided. It is not pre-existing. Second, it is created by a legal institution.[115] It is not self-created. Third, LRTD is not like any other option, such as listening to my podcast. By giving LRTD to someone, this person receives the *ability to give reasons*. This means that a LRTD-holder can choose to ignore the reasons against using LRTD, and give a protected reason – a duty – to third people to assist her in her suicide. These features make LRTD a protective object.

Let's recall that it is valuable that each person can construe the personal meaning of one's life on her own. I am far, however, from *solipsistic* accounts of the self. I am not arguing that we do not need other people to understand ourselves. I believe the contrary indeed. Conversations, for example, are key to giving meaning to one's life.[116] The point is that one should be entitled to demarcate others' intervention. This not only depends on the options one possesses but also on the *way* one attaches personal meaning. Aida's Bionic Legs example proves this. But even if one is not persuaded by that example, one can agree with the premise I am offering. That is, the freedom to construe the meaning of our lives must be protected. Moreover, it seems that if a third person distorts the way one does it, there is good reason to believe that that person's autonomy is being affected. This is reflected in cases of coercion or manipulation, say, slavery or gaslighting respectively. The problem with these cases, among the many they have, is that people cannot construe the meaning of their lives on themselves. Other people's actions restrict their ability to do it. This certainly makes them less autonomous.

There are other ways by which autonomy can be undermined. The appearance of a new option is also a way, even if it does not imply a coercive or manipulative action. I think it is often provoked by the stickiness of options. Some options are particularly sticky. Reason-giving can certainly be sticky. It can significantly distort how I understand myself.[117] A political authority adjusting the levies – ie. giving taxation duties – on the citizens' incomes can disvaluably distort their autonomy. This can perfectly be justified by public welfare reasons, or even by the autonomy's enhancement of third parties. However, rights-giving, or the option of using protected reasons as I framed it, is usually justified the other way around. They are grounded on how it enhances the holders' autonomy.

My claim is that LRTD has the opposite implication. Certainly, LRTD distorts the way in which the holder construes the personal meaning of her life. I believe this entails making LRTD-holders less autonomous. Two facts explain this. First, if one has been provided with LRTD, staying alive by default is no longer an option. Living would not only entail having the option of dying naturally or committing

[115] Which legal institution – ie. the congress, the parliament, the judiciary, the implicit recognition of legal officials, and so on – gives LRTD will depend on the contingencies of the legal practice of the jurisdiction.
[116] See Daniela Dover, 'The Conversational Self' (2022) 131 Mind 193.
[117] The *absence* of *explanatory reason-giving* can also disvaluably distort how one understands oneself; see Hasan Dindjer, 'Reasons to Give Reasons' (forthcoming).

suicide, but it would also entail having ultimately the option of committing suicide painlessly and without costs. The point is that every time one chooses the option of staying alive it implies that you are not choosing the duty-free, assisted suicide option. The LRTD-holder cannot choose anymore to *only* stay alive. Not being able to choose this makes the holder less of an author of her life. The rearrangement, thus, disvaluably distorts how the LRTD-holders construe the personal meaning of their lives.

Second, one should not be persuaded of the contrary by the seeming optative character of LRTD. This may treacherously convince us that it cannot undermine the chooser's autonomy. Besides the argument regarding options in general, LRTD has a particularly strong power attached. This is fueled by certain values that our society protects, say, beauty, money, youth, and strength. This relevance that LRTD obtains implies *pressure* on the holder to use it. But my worry is more precisely non-instrumental and *ex ante*. Having this option seems to invert the burden of proof. Without having the protection of LRTD, one does not have to justify why one is not using it. One lives one's life in the default mode. But after one has received the protection, it seems to appear a latent reason to justify our existence, and the non-exercising of LRTD. The point is that this reason can be strong enough to have the *need to justify*, either to yourself or to others, why one is deciding to stay alive. Generally, pressure is not a good ally for good decisions. At least, it does not help to make decisions more autonomously. The new choice people receive, LRTD, distorts how one decides, which creates a burden in the way people decide about their life and death.

It is important to highlight a crucial assumption underlying my argument. The duty of the state to protect citizens' autonomy, also entails a strong reason, maybe a pro tanto duty, not to push citizens to commit suicide.[118] I argue that the state does not conform to this reason when giving LRTD to people. It distorts the way people decide whether to live or die. This is why LRTD neglects the chooser's autonomy, rather than protecting it.

I may concede that LRTD might not be bad for *some* people on *some* occasions. I am referring to those people for whom the option will not alter their psychological status at all. The idea behind this objection is that my argument is highly dependent on psychological contingent matters. If one is not prone to suicide, or at least to depression, the objection goes, LRTD could not affect one's autonomy. I am sceptical of whether this has any relevance. First, we can distinguish people in *four pools* in terms of their relation to LRTD.

[118] Jonathan Herring asserts, '[a]s society plays a role in creating an environment in which suicide can flourish, society has a special responsibility to *protect citizens from committing suicide*'. Jonathan Herring, *The Right to Be Protected from Committing Suicide* (Hart Publishing, an imprint of Bloomsbury Publishing 2022) 4 [emphasis added].

The 'Regardless' Pool: People who will commit suicide *regardless* of whether LRTD is given to them or not.

The 'Unless' Pool: People who, albeit being inclined to commit suicide, will not do it *unless* they receive LRTD.

The 'Because' Pool: People who will form the intention of committing suicide *because* they have received LRTD.

The 'Invisible' Pool: People who do not want to commit suicide, and LRTD will not affect their decision; for them, LRTD is *invisible*.

Certainly, *ex post*, LRTD will not be a burden for the 'Regardless' and the 'Invisible' pools. LRTD seems to be bad for the 'Unless' and 'Because'. This is because they would not have committed suicide had it not been for the existence of LRTD. One may say, however, that LRTD respects the autonomy of the 'Unless'. This could make sense. The argument would still hold, however, for the 'Because' pool. For them, how they construe the personal meaning of their lives is deeply distorted by LRTD to the extent of forming the intention to kill themselves. This is explained by the argument I am offering. In one sense, the argument is the philosophical explanation of the slippery-slope argument. LRTD has the intrinsic risk of creating false positives.

Second, I must ask, who is not capable of being depressed? To the same extent that we all are potential criminal offenders – in different degrees – we all are capable of being extremely sad about our existence; we all are more or less prone to dislike the meaning we give to our lives, or to lose the will to give *any* meaning to our lives. Given all this, I think that my argument holds likewise, even assuming that some people will sometimes be less psychologically prone to be affected by LRTD. The burden that I refer to is normative. Although the degree of intrusion of LRTD will depend on some social and psychological contingencies, the non-instrumental normative burden provoked by the right persists.

One might further believe that my argument is trivial. Who can deny that decisions by political authorities about the normative landscape of citizens – ie. rights-giving, duty-imposing, adjusting responsibilities, and so on – will not distort how they attach personal meaning to their lives? The question is misguided. I am not denying this. I deny that we ought to do it with the meaning of death.[119] At least, in the way LRTD does it. It is trivially true that sometimes it is justified to change how people construe

[119] Compare footnote 107 in 3.1.

the meaning of some dimensions of their lives. Marriage is an example. The option of being able to divorce protectedly comes with an intrinsic cost of changing the meaning of marriage. Marriage will inevitably be different because spouses can opt out. Not having the duty to remain married distorts the sense of the commitment of agreeing to marriage.[120] Furthermore, sometimes *we ought to devalue* some dimensions of our lives. Slavery ought to be devalued by giving slaves a legal right to dissolve the normative bond that chains them to their masters. The reason why we do it, at least in these two cases, is precisely the enhancement of right-holders' autonomy. Giving these two options, thus devaluing the institution of slavery and marriage, entails enhancing the autonomy of slaves and spouses.

Given my argument, I do not believe there is reason to give LRTD. There might be a reason in a world where LRTD is either irrelevant or invisible to *all* people.[121] But in this world, having LRTD neglects its holder autonomy in a non-instrumental way. Protecting LRTD-holder's decision to *opt out of life uncostly*, distorts the way people give personal meaning to their life. It non-instrumentally reduce the autonomy of the holders because they are less authors of the most transcendental decision: whether to live or die.

I am highly indebted to David Velleman's argument against the legal right to die. Although I disagree with some parts of his argument, I share some essential aspects.[122] One of them is that I am *not* against assisting people in their suicide as a general rule. This is not the aim of my argument. Instead, both Velleman and I accept that there are scenarios where patients ought to be permitted to be assisted by physicians in terminating their lives.[123] As Velleman puts it, 'I favor euthanasia *in some cases*'.[124] These cases are those in which life is not worth living. But this does not necessarily imply that to conform to this, we should give people LRTD. It might be sufficient that the state has only the permission, and not the duty, to assist those patients willing to die. As I tried to show, the protected reason backing up LRTD makes much of the work in distorting the decision-making of the chooser. If we get rid of that, we may obtain both values: the enhancement of the chooser's autonomy and the value of assisting in terminating lives that are not worth living. The conundrum, certainly, lies in how the state should decide. Regardless of

[120] As Gerald Dworkin asserts, '(t)he presence or absence of this possibility [of dissolution] must affect the expectations brought to the marriage, the ability to tolerate imperfections of the marriage partner, the sense of commitment to the marriage'; Dworkin, 'Is More Choice Better than Less?' (n 113) 54.

[121] Thanks to Facundo Rodriguez for illuminating this and other parts of this chapter.

[122] Velleman expands his argument *directly to dignity*. He affirms that 'the dignity of a person isn't something that he can accept or decline, since it isn't a value *for* him; it's a value *in* him, which he can only violate or respect'; see J David Velleman, 'A Right of Self-Termination?' (1999) 109 Ethics 606, 613. I am less confident of the plausibility of this move. I agree that neglecting dignity is a necessary, non-instrumental backlash when autonomy is undermined. However, there are some strong assumptions that one has to agree with.

[123] ibid 619–620.

[124] J David Velleman, 'Against the Right to Die' (1992) 17 Journal of Medicine and Philosophy 665, 679.

this, if you think my argument and Velleman's about LRTD's holder-relative, non-instrumental disvalue is correct, the soundness of how the Standard Picture understands rights is undermined.

3. Disabling Rights: Criminal Defendant's Legal Right to Lie

'And what good is life without conversation?'

Home Improvement, Wislawa Szymborska[125]

We move now to the second example of a disvaluable right. In this chapter, I advance the disabling way in which rights can be non-instrumentally disvaluable for their holders. I focus on how having a right can disable its holder from participating in the relationship that the same right presupposes that it should be constituted. I call Disabling Rights this class of rights. I offer one example in this class, the Criminal Defendant's Legal Right to Lie (hereinafter, LRTL). This is a right that criminal defendants of most civil law jurisdictions have. In a nutshell, criminal defendants lose their epistemic ability to robustly speak by virtue of the normative protection that entails having LRTL. Hence, they are disabled from constituting the conversational relationship with their hearers – judges, juries, and other legal officials. I shall start by framing LRTL. Then, I will explain the holder-relative, epistemic disvalue, and compare it to how other accounts treat similar epistemic-related injustices. Lastly, I will defend the argument from what I think is the most powerful objection, the Taking Responsibility Objection (TRO).

3.1 The Weak and Strong Argument

In most civil law jurisdictions, perjury laws do not reach criminal defendants. That is, although witnesses, whether expert or lay, have an obligation to be sincere in courts, criminal defendants do not. All other participants, except criminal defendants, are reached by this duty. However, criminal defendants are *legally permitted to be insincere* during the criminal process.[126] This is explained, among other reasons, by the fact that they are exempt from punishment for lying in court. We may say that, in those jurisdictions where there is no law punishing their lies, criminal defendants have a weak permission to lie. Lying, for them, in the context of the criminal trial, is as protected as any other privileges people have, such as looking at other people's faces or listening to a podcast. This is a bilateral liberty. I may or may not listen to my podcast. In the criminal trial's context, the criminal defendant may or may not lie without legal consequences. This is the case because criminal defendants do not have a prohibition to lie or a duty to

[125] Wislawa Szymborska, *Nonrequired Reading. Prose Pieces* (Clare Cavanagh tr, Harcourt 2002) 44.

[126] I will interchangeably use 'to be insincere' and 'to lie'. This is certainly not true in ordinary morality. But it is in the legal context. Lying is equal to being insincere. In the same vein, I will use interchangeably 'being sincere' and 'telling the truth'.

tell the truth. Thus, given the legal gap, criminal defendants can opt whether to lie (being insincere) or to tell the truth (being sincere) without triggering any legal cost.

Judges are duty-bound not to interfere with criminal defendants exercising LRTL. Therefore, in legal contexts, criminal defendants have a strong permission to lie, as they are highly protected in doing so. This protection is greater than my permission to listen to a podcast. It means that criminal defendants can disregard reasons against lying more than I can disregard reasons against listening to a podcast. Judges must not hold criminal defendants accountable for lying, and Congress should not change the laws to make them liable for lying. While there are many reasons that could make it impermissible for me to listen to my podcast, no reason could make a criminal defendant liable for lying. This demonstrates that criminal defendants have a strong justification for lying, and no consideration could override this permission. Therefore, criminal trial rules exclude the option of holding a defendant liable for being insincere, even if lying outside the courtroom would be morally impermissible.

I will not enter the debate about whether this argument is sound. Common law traditions have definitely understood that it is not. This might be the implicit reason why they do not grant this permission to criminal defendants. The important point here is that legal practices of most civil law countries recognise the strong permission I described. What I am here calling LRTL is a bundle of normative incidents. It gives criminal defendants a protected liberty to lie in court and the immunity to have their normative status regarding lying not changed. This is further explained by the fact that, in most civil law countries, LRTL's permission is legally derived from the right against self-incrimination itself. [127]

The right against self-incrimination, including the right to remain silent, is crucial in protecting the status of criminal defendants from state coercion. It stems from the liberal tradition in criminal law, which prioritises defending the interests of the accused. This is evident in the focus on reducing the risk of false convictions and the assumption of innocence for criminal defendants. For those civil law countries where LRTD is recognised, it has been argued that to truly protect defendants, they should also have this level of protection in their lying.

This means that it is not only the case that criminal defendants have a legal permission to lie by a legal gap, but a *constitutionally* protected legal right. Luigi Ferrajoli, for example, says that the '*Nemo tenetur se detegere* [no one should the imposition to accuse herself] is the first rule of liberal and adversarial criminal law … it flows from it … the right to silence … and the *criminal defendant's privilege not to tell the truth in her answers*'.[128]

[127] Take the case of Argentina. There are two cases in which the Supreme Court of Argentina asserts the validity of this constitutional argument. These cases are '*Mendoza*', decided in 1864, and '*El Atlántico*', decided in 1971.

[128] Luigi Ferrajoli, *Derecho y Razón: Teoría del Garantismo Penal* (Trotta 1995) 608 [the translation from spanish to english has been made by me; emphasis added].

This argument about the value of LRTL replicates how the Standard Picture of Rights (SPR) has defended the value of right-holding. Arguably, for SPR, having LRTL enhances its holder's status, either fostering its autonomy or dignity. Having the option to lie should be good for the criminal defendant because it shields her from the unbearable pressure that having the prohibition to lie would entail. Hence, criminal defendants in civil law countries are freer. On a weaker note, SPR would agree that having LRTL cannot be disvaluable for its holder. Criminal defendants have an extra option that protects their autonomy. In addition to remaining silent or telling the truth, *they are strongly permitted to lie*.

3.2 A Holder-Relative Epistemic Disvalue

Contrary to this, I believe that having LRTL critically undermines the defendant's epistemic and, indirectly, moral status.[129] I want to argue that because the criminal defendant has a legal right to lie, she is disabled from giving testimony in the distinctive way that humans can. This way of transmitting and acquiring beliefs through testimony has been treated in social epistemology literature. The key question can be approached in the following way. What makes it the case that A tells B *p,* and A is justifiably believed by B regarding the truth of *p*?[130] In the epistemology of testimony, two families of theories have disputed around what are the necessary and sufficient conditions that must obtain for someone to rely on a testimony justifiably: Reductionism and Non-Reductionism.

Reductionism claims that a hearer can justifiably rely on the speaker's assertion (*p*) if the hearer has a *positive* and *non-testimonial* reason to believe that *p*. In other words, a hearer can justifiably believe *p* if, and only if, she has an undefeated reason to believe *p*, which is not *p* itself.[131] This reason can be, for example, that the speaker is generally reliable or that she is particularly competent in the topic she is

[129] I have previously defended this position elsewhere; see Joaquin Casalia, '"Yo No Fui". Sobre el Valor Epistémico de la Palabra del Acusado' (Universidad Torcuato Di Tella 2022). The claim is quite similar as the one I am developing here. However, what you will find here is different in four aspects. First, I am stricter regarding the *nature* and *extent* of the disvalue. I will argue that no reasonable person, under the criminal defendant's robes, would like to have the legal right to lie. The argument I offered in the previous thesis implied that there might be a reasonable criminal defendant who would like to suffer an epistemic and moral harm in order to obtain another further benefit – eg. not going to jail – if the right is well exercised. But here my claim is different. The harm suffered by the criminal defendant is the non-instrumental disvalue implied by holding LRTL. Second, the *reasons* I offer to support my claim here are different. Given that I am not interested in the soundness of the constitutional argument, as I was in the previous thesis, the only direct focus is the epistemological. I argue that criminal defendants' speech is doomed because they are disabled from *robust epistemic reason-giving*. Third, I compare my account with Miranda Fricker's epistemic injustice and Rae Langton's silencing theories. These are two argumentative moves that I did not advance in the previous thesis. Lastly, in this thesis, I defend my claim from what I think is the most powerful objection that my argument can be object of. This is the Taking Responsibility Objection (TRO).

[130] Note that my interest is not whether B *knows* A's *p*, but what must happen for B to rely on A regarding the truth of *p*. This is why I am interested in the phenomenon of *telling*: the fact that A tells B something with the intention of being believed by B.

[131] For a classic defence of reductionism in epistemology of testimony, see Elizabeth Fricker and David E Cooper, 'The Epistemology of Testimony' (1987) 6 Proceedings of the Aristotelian Society, Supplementary Volumes 57.

speaking about. The testimony itself, if there is no other reason to support the speaker's reliability, cannot be a sufficient positive reason to ground the belief. This means that testimonial justification must be *reduced* to other pre-existing and independent reasons acquired by, say, 'perception, memory, and inductive inference'.[132]

For Non-Reductionism, it is required that the hearer does *not* have any undefeated defeater that could override the justification of believing in *p*.[133] Instead of the presence of an independent positive reason, Non-Reductionism requires the absence of a negative reason. Therefore, the hearer can justifiably believe *p* as long as there is no reason defeating the belief that *p*.[134]

However, a new family of views has emerged in recent years. This has been referred to as the Interpersonal View of Testimony.[135] We find a promising way to explain the phenomenon behind LRTL inside this family. This is called the Assurance View.[136] Richard Moran has defended this view. According to him, the distinctive element of testimony is that it can be a genuine and decisive reason for the listener to believe in what has been asserted.[137] The *epistemic transfer implies an intentional offering of a normative assurance by the speaker*. She guarantees the truth of *p taking responsibility* for it. In Moran's words, '[o]n the assurance view, dependence on someone's freely assuming responsibility for the truth of P, presenting himself as a kind of guarantor, provides me with a characteristic reason to believe, different in kind from anything provided by evidence alone'.[138] If this happens, the speaker offers her testimony as a robust and complete reason to believe in it. This, in turn, implies that the hearer has the right to challenge the truth of *p*. Hence, if the speaker cannot justify her epistemic position, the listener has the standing to blame the speaker.

I will here rely on the Assurance View. This does not mean that I could not ground my claim on Reductionism or that I might offer no other kind of non-reductionist argument. I am confident that I could defend my position with these other theoretical frameworks. The Assurance View, however, is particularly adequate for depicting the phenomenon of *human telling*. We can initially describe this concept as the action of telling something to someone with the intention of being believed by the hearer

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[132] See Jennifer Lackey, *Learning from Words: Testimony as a Source of Knowledge* (Oxford University Press 2008) 144.
[133] See ibid 158.
[134] For the classic defence of non-reductionism, see CAJ Coady, *Testimony: A Philosophical Study* (Oxford University Press 1992).
[135] Jennifer Lackey refers to this family as an autonomous branch of the epistemology of testimony; see Lackey (n 132) 221. It seems clear to me, however, that the Interpersonal View of Testimony has an intimate connection with the non-reductionist approach to the phenomenon of epistemic reason-giving by way of testimony.
[136] Inside the Interpersonal View of Testimony, you can also find the *Trust View*; see Benjamin McMyler, *Testimony, Trust, and Authority* (Oxford University Press 2011).
[137] Richard Moran, 'Problems of Sincerity' (2005) 105 Proceedings of the Aristotelian Society 325; Richard Moran, 'Getting Told and Being Believed' in Jennifer Lackey and Ernest Sosa (eds), *The Epistemology of Testimony* (Clarendon Press ; Oxford University Press 2006); Richard Moran, *The Exchange of Words: Speech, Intersubjectivity, and Social Acts*, vol 1 (Oxford University Press 2018). For his latest defense of the assurance view, see Richard Moran, 'The Exchange of Words: Replies to Critics' (2019) 27 European Journal of Philosophy 786.
[138] Moran, 'Getting Told and Being Believed' (n 75) 279 [emphasis added].

by virtue of what has been told. I believe that this is how we normally speak to each other in conversational situations. When we speak to each other in this way, both interlocutors endorse some normative assumptions about each other. For example, as the Assurance View argues, we assume that the speaker can take responsibility for her assertions. This connects the normative standpoint and the epistemic import of speech. This aspect of speech can be understood as a *normative felicity condition*.[139] If this is not obtained, the speech act of telling cannot be successful. Furthermore, the fact that people can assume this is what distinguishes us from other entities, such as objects, animals, or even children. This is the dimension of human speech that the Assurance View captures well. Given that I assume that the criminal defendant should have the ability to *tell* her story to her legal hearers, I believe that the Assurance View will serve the purpose of my argument.

We should ask whether the criminal defendant, who holds LRTL, is responsible for what she tells the legal officials. My claim is that the absence of a legal challenge prevents her from being responsible. Her hearers are not able to hold her liable for being insincere. In the criminal context, it implies that the criminal defendant ought not to be held responsible for it. As you may note, if the Assurance View is true, and she is not responsible for the truth of her testimony, she is disabled from giving successful testimony.[140] The speech act of telling will be disabled from the epistemic toolkit of criminal defendants. If this is the case, the criminal defendant is disabled from giving their hearers a *distinctive reason* to believe what she says. Criminal defendants' testimony is not in itself a good reason for their listeners – the other participants of the trial – to believe in what they say. This is how the epistemic agency of criminal defendants is undermined by virtue of having LRTL.

It is important to note that this does not mean that criminal defendants' *capacity to be believed* is completely impaired. Judges and other trial participants may have other independent reasons to believe what the criminal defendant says. Additionally, the testimony (p) of the criminal defendant can influence the judges' space of reasons, accommodating it in some way to trigger a reason to believe that p. Criminal defendants who hold LRTL can *somehow* give reasons for belief in their testimony. David Enoch distinguishes three ways in which reasons are given: *purely epistemic reason-giving*, *merely triggering reason-giving*, and *robust reason-giving*.[141] Let me unpack them in turn. First, when I *signal* to a car driver not to cross the street because of a red light, it is an example of purely epistemic reason-giving. The person signaling simply *indicates* that the car driver has a reason requiring her to stop. She points to a pre-existing reason not to cross the street on a red light.

[139] For an explanation of the concept of *normative felicity conditions*, see Stephen L Darwall, *The Second-Person Standpoint: Morality, Respect, and Accountability* (Harvard University Press 2006) 3–5.
[140] For 'successful testimony', I mean a testimony that is told by A to B and justifiably believed by B.
[141] David Enoch, 'Giving Practical Reasons' (2011) 11 Philosophers Imprint 2.

Second, the fact that I step on the street gives the car driver a reason to stop the car. Although I am not creating a reason, I am manipulating the non-normative facts so that the car driver is now aware of a reason that she already had independently of my stepping. Namely, that she ought to stop if someone sets her foot on the street. What I am doing, in Enoch's terms, is 'to manipulate the non-normative circumstances in such a way as to *trigger* a *dormant reason* that was there *all along* …'.[142] Enoch calls this, the *merely triggering* way of reason-giving. What distinguishes this from the purely epistemic example is the role of the reason-giver. In the triggering case, in one sense, the car driver ought to stop *because* I stepped on the street. Had I not stepped on the street, the car driver would not have acquired the reason. Contrary to this, if I had not indicated to the car driver about the existence of the red light, she would likewise have had the requirement to stop.

Note, however, that in both purely epistemic and merely triggering ways, the Reductionism's claim holds. To justifiably believe that one has a high temperature because the thermometer says so, or to stop one's car because the pedestrian stepped on the street, one must have a positive and pre-existing reason to do so; the reason that gives the thermometer reliability, and the reason that requires to stop if a pedestrian steps on the street, are doing either the epistemic or practical work.

Lastly, there is a more robust way in which humans can give reasons to each other. By asking my partner to help me in my dissertation, I am not just calling her attention to an independent reason for her to do so. And, arguably, I am not merely triggering a pre-existing practical reason for her to help me. Rather, I am creating, or at least purporting to create a new reason for her to do so because I said so. Requests such as this one, or commands, promises, and so on, are cases of *robust practical reason-giving*. My partner now has a reason to help me with my dissertation, one which he did not have before I requested her to do so, and one that was created robustly by me request rather than merely triggered by it.

For Enoch, however, even these robust cases of reason-giving are special instances of triggering reason-giving.[143] They are *not* cases of *mere* triggering. But they do are, for Enoch, cases of triggering reason-giving. In this sense, requests create the intended reason – the reason that the requested person does whatever the content of the request says – only by way of reduction to pre-existing and independent reasons.[144] Thus, Enoch discards the Non-Reductionist thesis – or, as he puts it, the irreducibility one.[145]

[142] Enoch (n 75) 4 [emphasis added].
[143] This is thoroughly criticised by Ezequiel Monti; see Ezequiel H Monti, 'Against Triggering Accounts of Robust Reason-Giving' (2021) 178 Philosophical Studies 3731.
[144] Enoch (n 141) 14–18.
[145] ibid 13–14.

But more importantly for us here, Enoch firmly discards the plausibility of this thesis in the epistemic realm. Thus, he affirms that epistemic reasons cannot be robustly given, not even by way of testimony.[146]

I believe, contrary to this thought, that *testimonial robust reason-giving* exists. The speech-act of telling best reflects this. When we tell *p* to someone with the intention of being believed, we are purporting to give the hearer a reason to believe that *p* by that very act of telling her that *p*, and quite independently of any pre-existing reasons that our so telling might trigger. The intention is robust in that it looks for an interdependence of intentions between the speaker and the hearer. The speaker aims for the hearer to recognise her intention of *telling p*. This is enabled by recognising both her normative and epistemic status. The telling that *p* itself is meant to be a reason to believe that *p*. By the same token, my request that my partner helps me with my dissertation is meant to be, in and of itself, a reason for her to do it, quite independently of whatever pre-existing reasons it might trigger in addition

Certainly, as the Assurance View explains, the speaker must freely take responsibility for the truth of *p*. But if this obtains, the hearer does not need any other independent reason to justifiably believe *p*. Moreover, if the hearer does otherwise, he inserts *p* in the balance of non-testimonial reasons, thus degrading the speaker's epistemic status. It is true that sometimes we are entitled to do this. This seems obvious. If my partner tells me *p*, and I have plenty of reasons against the truth of *p*, I have the right to challenge the truth of *p*. But note that this assessment is *ex post*. Before my partner tells me *p*, I am assuming that she can fulfil the normative felicity condition. She can take responsibility for the truth of *p*. Hence, I can, by default, believe in her reliability to tell me *p*. Exactly because that can obtain, I can challenge her regarding the truth of *p*.

This is exactly what the criminal defendant, who holds LRTL, cannot do. Because they are not responsible for the truth of *p*, they cannot fulfil the normative felicity condition. Thus, they lose their *capacity of telling*. In other words, their assertions cannot be distinctive reasons in themselves for their hearers to justifiably believe in them. Criminal defendants, despite their claims being believable in a purely epistemic or triggering way, do not have the ability to robustly give testimonial reasons. Their words lose the force of being treated as non-evidential reasons for belief. In other words, criminal defendants are disabled from speaking in the distinctive way humans can communicate. Robust reason-giving by way of testimony is excluded from their toolkit. Their assertions cannot be distinctive reasons for their hearers to believe in them justifiably. This is because the normative felicity condition – the freely taken responsibility for the truth of *p* – cannot be met.

Notwithstanding this, criminal defendants who have LRTL can perfectly give *purely epistemic* reasons by way of testimony. Their capacity to be believed is not completely impaired. Their speech can

[146] ibid 19. Interestingly, both Enoch and Monti, albeit criticising each other in the practical realm of reason-giving, seem to adhere to the following: that testimonial reasons cannot be robustly given.

give reasons for believing in what they say in the same way that thermometers can give reasons for believing the temperature is as they report it to be. If there is good positive and non-testimonial reason to believe in a criminal defendant's assertion that *p*, judges can justifiably believe that *p*. Perhaps criminal defendants might also give epistemic reasons in a *merely triggering way*. A criminal defendant by saying *p* may somehow accommodate the evidence to the extent of triggering a reason to believe that *p*. Their speech, thus, can be treated as evidence for the truth of *p*. Therefore, their hearers – eg. judges, juries, prosecutors, or any other participant of the trial – can justifiably believe in their assertions in the purely epistemic way by which one acquires the belief that is raining because one sees a wet umbrella, or in the triggering way by which a 5-year-old child tells me that today is Remembrance Day. This is why the status of criminal defendants who have LRTL, if my argument holds, is critically undermined. They cannot be treated as active participants who have the ability to account for themselves as adult responsible people can.[147]

3.3 The Epistemic Injustice and the Silencing Acts Theories

My argument resembles two contemporary theories in philosophy. One is Miranda Fricker's theory of *epistemic injustice*, and the other is Rae Langton's theory of *silencing acts*. Fricker argues that speakers can experience testimonial injustice by virtue of structural prejudices held by their hearers.[148] The idea is that the epistemic value of a testimony can be undermined because the listener harbours prejudice against certain non-epistemic aspects of the speaker. As a result, the listener may be unable to believe the testimony due to preconceived notions about people such as the speaker. As Fricker argues, these structural prejudices can amount to many relevant 'dimensions of the social activity – economic, educational, professional, sexual, legal, political, religious, and so on'.[149] Thus, the speaker is harmed because she is disabled from conveying beliefs in the way we all should be able to convey.

Rae Langton, instead, focuses on how the ability to produce illocutionary acts can be silenced.[150] Langton stands upon the shoulders of J. L. Austin's theory of speech acts. These can be divided into their locutionary, illocutionary, and perlocutionary dimensions.[151] The illocutionary aspect is the most relevant in determining what kind of normative force a speech act has. That is, whether a certain speech act is a request, a command, the sale of a property, the christening of a ship, the phenomenon of telling, and so on. For Langton, people can be unjustly deprived of the illocutionary force. For example, the fact that

[147] For an explanation of what it is to account for ourselves, see Gardner, *Offences and Defences* (n 65) 181–182.
[148] Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (Oxford University Press 2007).
[149] ibid 27.
[150] Rae Langton, *Sexual Solipsism: Philosophical Essays on Pornography and Objectification* (Oxford University Press 2009) Chapter 1.
[151] JL Austin, *How to Do Things with Words* (Oxford University Press: Clarendon Press 1961) 98–107.

women did not have the right to vote, even if a woman would have inserted a ballot in the way men did it, deprived them of the capacity to perform the speech act of voting. Her argument expands on how this ability can be lost by other non-normative acts such as pornography. The way porn objectifies women makes it the case that all women, even those who do not participate in pornography, lose their normative power to convey requests such as the refusal of a sexual activity. Thus, a speaker – a woman – might tell *p* to a hearer with the intention of refusing to have sex, but the hearer, although she can understand the locutionary aspect of *p* (ie. the strict meaning of what she is saying), cannot assimilate the illocutionary force (ie. woman's intention to say no to the sex). For Langton, this illocutionary deprivation is what *silences* women.

Both accounts are highly attractive to me. They share my intuition about how other non-epistemic facts can undermine the epistemic value of someone's speech. Notwithstanding this, there are at least two distinctions I ought to make. Regarding Fricker's account, while I argue that the harm criminal defendants experience is caused by their having a normative object, a right, she can argue that the criminal defendant might be harmed by the social and structural prejudices hearers possess towards her. The distinction is then twofold. My argument is speaker-oriented and normative-oriented. I am focusing on a normative object, a right, that the speaker holds.

Langton's account is even closer to my own. Her theory is mainly focused on the ability that the speaker loses by virtue of how her authority is undermined. So, although she does not distinguish between normative and factual objects, her account reflects both my speaker and normative orientation. The difference lies, though, in the *rights orientation* of my argument. Langton's cases are focused on the absence of a right, the presence of a prohibition, or the occurrence of some undermining practice (ie. pornography).[152] Even though I agree that these are also instances of the same kind of phenomenon, I am concentrating my efforts on making the case that the epistemic disvalue can be obtained by virtue of the *presence* of a right, and precisely because the right works as it is meant to work.

3.4 Why the Epistemic Harm is Disvaluable?

There are two reasons why, if my argument were true, it is worth considering the epistemic harm as all things considered disvaluable. The first one is a matter of how it affects the criminal defendant's *moral worth*, and the second is a matter of *equality*. First, if my argument is correct, the criminal defendant loses his ability to speak robustly. That is, speaking with the intention that the hearer will take his word as true unless another reason rather than the speaker's speech act defeats the formation of the belief in the

[152] For Langton's explanation, see Langton (n 150) 47–62.

defendant's assertion. The moral wrong implied by this deprivation will depend on the ideal of the criminal trial that one has. If one believes that the criminal defendant must have the option of actively participating in it, one should agree with the problem entailed by holding the right to lie. This is the case because the criminal defendant who holds this right, if my argument is sound, can only be believed in the same way inanimate objects produce beliefs. They are disabled from transferring beliefs in the way humans distinctively can.

Having LRTL also entails a second major problem. All the other participants of the trial, rather than the criminal defendant, are able to robustly give epistemic reasons by way of testimony. They can offer their word as a complete reason for being believed. If my explanation is right, they can do it, among other reasons, precisely because they do not have LRTL. On the contrary, criminal defendants have LRTL, and henceforth they cannot do it. This entails a profound unequal treatment of the criminal defendant in relation to the other participants of the criminal process.

For these reasons, the value that the Standard Picture sees in having rights cannot obtain. Recall Robert Nozick's idea, pictured by H. L. A. Hart in *Between Utility and Rights*, that 'rights form a protective bastion enabling an individual to achieve *his own ends*'.[153] Contrary to this value judgement, I believe that having LRTL disables its holder, the criminal defendant, from achieving 'his own ends': being robustly believed.

3.5 A Powerful Objection: The Taking Responsibility Objection

Some people would press against my argument in the following way. The criminal defendant who has LRTL is certainly unable to be *legally* responsible. But nothing impairs her from taking responsibility in a non-legal way. If this can happen, the criminal defendant regains her option to give testimonial, epistemic reasons robustly. Recall that for the Assurance View, one must be able to intentionally take responsibility for the truth of one's assertion in order to be robustly believed. So, if it is true that the criminal defendant, albeit not being legally responsible, is able to take responsibility in some other way, her testimony can be given in the distinctive way that the Assurance View depicts. Let's call this objection the Taking Responsibility Objection (TRO). The argument can be summarised in the following way:

Taking Responsbility Objection (TRO):

(1) Given LRTL, the criminal defendant is not legally responsible for the truth of their assertions

[153] Hart, 'Between Utility and Rights' (n 5) 835.

(2) The criminal defendant might, however, take responsibility in a non-legal way

(3) Therefore, the criminal defendant, even if she holds LRTL, can meet the conditions of the Assurance View

This seems plausible. But what is this 'non-legal way'? Here is one way to go. Let us focus on the relationship between criminal defendants and judges. A criminal defendant might believe that judges, while they cannot criminally blame her for being insincere, have *negative reactive emotions* towards her in case she is insincere. Judges, at least, can internally condemn criminal defendants for being insincere. In this vein, the insincerity of criminal defendants is a reason for judges to have the condemning emotion. This is a robust moral emotion. It is fitting because the criminal defendant does not conform to a guiding reason: the non-legal duty to tell the truth. Because the defendant is doing something wrong – lying – her hearers can aptly develop condemnation. If this holds, premise (2) of the argument is felicitously grounded. Criminal defendants can take responsibility for the truth of *p* because judges, if *p* is false, would emotionally react by condemning the criminal defendant for not conforming to the correct non-legal reason that makes it the case that lying is wrong.

There is a last meta-explanation to explain the objection fully. Judges are also aware of criminal defendants' beliefs about their beliefs. This is why judges can hold them non-legally responsible for their insincerity. Basically, both criminal defendant and judges know that if the criminal defendant lied, judges would react negatively. Therefore, the criminal defendant can be held responsible for the truth of *p*.

Is this sufficient to argue that criminal defendants can take responsibility for the truth of *p*? I do not think so. There are at least two ways to respond to TRO. First, one can say that while the criminal defendant who has LRTL can take responsibility he can only do it in a *deviant* way. Suppose a world where a judge, Walter, can only assume that a criminal defendant, Iris, is responsible for the truth of her testimony if he has a good breakfast. Walter is a great criminal judge, though. He has a great record convicting the culpable and acquitting the innocent. This is the case because Walter is a master of the rules of the criminal process and criminal law. But if Walter has a bad breakfast, he is not in the mood to engage in the non-legal reasoning required to hold the criminal defendant responsible for the truth of what she tells him. Hence, he cannot hold Iris responsible for the truth of her testimony. This can certainly create a strong reason for Iris to assure that Walter has a good breakfast, say, giving him a French breakfast. Thus, she guarantees that she, at the end of the day, can take responsibility for the truth of *p*. Iris finally reaches to give the French breakfast as a present to the judge. By virtue of this, Walter is able to hold Iris responsible for the truth about what she wants to tell him.[154]

[154] I thank Ezequiel Monti for discussions regarding this example and related issues.

What the example illustrates is that, even if we can say that Iris can take responsibility in some way, either being lucky that Walter has a good breakfast or inducing it, the way she can achieve this is *too* deviant. That is, the way to do it is too burdensome and unequal to believe that having that option is good for her. It is probably true that in our world, where criminal defendants have LRTL, they can still gain responsibility in a non-legal way. As the objection says, criminal defendants can take responsibility by virtue of a set of beliefs that they and judges must have. Basically, judges will emotionally react negatively if the criminal defendant lied. But this only works if LRTL is *not considered*. Both criminal defendants and judges must make too much *effort* to create the conditions to trigger the responsibility of the defendant for the truth of her *p*. Therefore, the deviation of the way by which criminal defendants can gain responsibility is what proves that having LRTL is still non-instrumentally disvaluable for its holder.

There is a second and shorter way to respond to TRO. The argument proposed by the objection assumes that judges can consider non-legal reasons to hold the criminal defendant responsible. More specifically, for the argument to work, one must be committed to the fact that emotions can be considered to condemn the defendants for lying. All this seems misguided to me. Why can a judge do something that is against the law? Namely, why can a judge hold the criminal defendant responsible for the truth of what she says when the law says that ought not to do that? But there is something even more outrageous. Why should the criminal defendant accept this? I respond negatively to all these questions. As I argued earlier in this chapter, the fact criminal defendants hold LRTL is enough to ground the duty on the legal officials to exclude any non-legal consideration. Or at least, not to consider them as reasons to ground emotions, beliefs, attitudes, decisions or actions, such as those that must obtain to hold the criminal defendant responsible for the truth of her *p*. This is connected to the fact that the only way to take responsibility by the deviant way described is *disregarding the existence* of LRTL. This seems clearly out of the reach of the judge's role. The mistake in TRO's argument can also be explained more broadly. Judges can only use those reasons validated by criminal law. If there is no positive legal reason allowing judges to consider their, say, emotions, they ought not to do it. In those civil law jurisdictions where criminal defendants have LRTL, criminal defendants have a *claim* against the judge who does it. If this occurs, the defendant can file a complaint against the judge, arguing that it is not appropriate for the judge to consider emotions. Essentially, if a judge assumes that a criminal defendant is responsible for the truth of what they say, it indicates that the judge is acting wrongly.

The criminal defendant's example shows that having a right can be non-instrumentally disvaluable for its holder. Criminal defendants who hold LRTL lose the distinctive epistemic import that human beings have when giving testimonial, epistemic reasons. And precisely as a result of holding a right – LRTL – the holder – the criminal defendants of (some) civil law countries – is disabled from forming the

intrinsically valuable relationship that the underlying interest is aiming to create: the conversational relationship between the criminal defendant and the legal officials.

4. Self-Defeating Rights: Children's Moral Right to Be Loved

'Behind the bitter word, the angry gesture,
I find the love that neither wished to kill'
Father and Son, Robert Greacen[155]

In the previous two chapters, I discussed how legal right-holding can be bad for its holders. In this chapter, I shall present an example of a moral right, the Children's Moral Right to be Loved (hereinafter, MRTBL). Essentially, MRTBL is self-defeating because simply having it denies, or it dramatically reduces, its holder the possibility of fulfilling its content, being loved. MRTBL, recognised or not, creates a disvaluable, latent suspicion that affects children's ability to be genuinely loved. I call this family of disvaluable rights, Self-Defeating Rights. Although my argument will focus on the lack of a plausible right-holder-oriented justification for MRTBL, overall, MRTBL can be justified in how it improves the lives of third parties.

4.1 The Case for a Moral Right to Be Loved

It could be argued that children have a moral right to be loved. Being loved is crucial for having a good life. Hence, if this is deeply valuable, it would follow that we should protect it. Although this can be true for all humans, this value is accentuated when referring to children. Love, for them, seems to be crucial for enhancing their freedom.

Matthew Liao has argued that children have a *Moral Right to be Loved*.[156] Hereinafter, I will call it MRTBL. Although I take Liao's as a good explanation of why this right might exist, his is just one of the possible explanations. Other arguments may be given in order to ground MRTBL. However, I use Liao as a proxy to assess the value of having MRTBL *for* the children.

For Liao, MRTBL is grounded on the fact that children *need* to be loved to have a good life. Following the Interest Theory of rights, the one seemingly adopted by Liao,[157] children have an interest in being loved sufficiently valuable to hold people under the duty to love them. This is a twofold protection:

[155] Robert Greacen, *Poets from the North of Ireland* (Frank Ormsby ed, First edition published 1979, The Blackstaff Press 1990) 72.
[156] I will here only concentrate in *children's* moral right to be loved. Liao also offers an argument grounding the existence of a moral right of *older people* to be loved; see S Matthew Liao, 'Do Older People Have a Right to Be Loved?' in Kimberley Brownlee, David Jenkins and Adam Neal (eds), *Being Social* (1st edn, Oxford University Press 2022).
[157] S Matthew Liao, 'The Right of Children to Be Loved' (2006) 14 Journal of Political Philosophy 420, 425.

people cannot interfere in children's being loved, and children may hold others – everyone but especially their parents – under the duty to love them. For Liao, the correlative duty to love children, albeit in different degrees, is *universally* held.[158] Everyone has a duty to love newborn Aida to different degrees, depending on their relationship with her. For example, parents have a duty to develop love, while others may discharge their duty to love by paying taxes.[159] Let me summarise Liao's argument:

> *Holder-Oriented Case for the Moral Right to Be Loved*:
> (1) People have rights to those primary essential conditions for a good life
> (2) Being loved as a child is a primary essential condition for a good life.
> (3) Therefore, children have a right to be loved

The argument seems sound.[160] The conclusion follows from the two premises. If it is true that people have rights to those essential conditions that allow us to have a good life, and if being loved when one is a child is one of those, it follows that children hold MRTBL. For Liao, MRTBL is a *genuine human claim-right*. Firstly, it is a human right because it is one of those moral rights, in Liao's terms, that people have because they contribute to having a good life *qua* human being. Liao's human rights approach is thus *naturalistic*.[161] Secondly, MRTBL is genuine because it has a normative force that is independent of external, contingent factors. Specifically, MRTBL is morally genuine in the sense that its genuineness is grounded in a moral reason, namely that MRTBL contributes to the well-being of its holders, children. Thirdly, MRTBL is a claim-right. This is the force that explains its normative protection. Holding MRTBL gives its holder a *valid claim* to enforce the correlative duty attached, the duty to love her.

Liao's argument relies on an implicit premise (IP) that having rights is crucial in explaining why children have a good life. We can express it in the following way:

> (IP) Rights are those normative objects that enhance their holders' capacity to live a good life

The point here is to clarify that rights must be valuable because they are important for the right-holder to be loved. As he puts it, '[g]iven the *strong protection that rights offer for rightholders*, and given the importance

[158] ibid 430–433; Liao, *The Right to Be Loved* (n 9) Chapter 5.
[159] Liao, 'The Right of Children to Be Loved' (n 157) 433; Liao, *The Right to Be Loved* (n 9) 138–139.
[160] See Liao, 'The Right of Children to Be Loved' (n 157) 422.
[161] Liao argues that MRTBL does not rely on any specific institutional framework. While he cites international treaties to support MRTBL, he emphasises that its presence in these treaties is not a necessary or sufficient condition for its existence; see Liao, *The Right to Be Loved* (n 10) Chapter 2.

to human beings of having the primary essential conditions for the pursuit of a good life, it seems reasonable that human beings have rights to these primary essential conditions'.[162] Eliciting this endorsement in Liao's argument helps me to link him with the Standard Picture of Rights. If rights are essential for a good life, they cannot be holder-relative, non-instrumental disvaluable. The question is whether this assumption holds true. If MRTBL-holding implies that children cannot be loved or that their chances of being loved are dramatically reduced, it follows from Liao's argument that they could not have a good life. This would be another example of a right can devalue the life of its holder. If this is true, the Standard Picture's Right-Holding as an Enhancer View would also lose force under this scenario.[163]

Who does not want to help children to be (more) loved? Alas, I demure whether MRTBL is the appropriate way to go. Critics have raised various objections to Liao's claim, most of them focusing on those who hold the correlative duty to love children. The most relevant is the commandability objection.[164] It claims that love, like any other emotion, cannot be neither willed nor commanded. This objection, I think, has a phenomenological approach. Instead, my argument focuses on the disvalue suffered by the right-holder. The idea is that if children had a right to be loved, it would deny or dramatically reduce their possibility of being genuinely loved. Since having MRTBL would be disvaluable for the children, the idea that children have MRTBL is overridden. I will also present an argument with a weaker implication. Perhaps MRTBL's existence is justified by how it contributes to other people's lives rather than the right-holder's. But this comes with the cost of accepting that it does not promote its holder's loved status. Both the strong and weak arguments defeat Liao's Implicit Premise. Hence, there is a further reason to believe that the Standard Picture of Rights wrongly assumes the Right-Holding as an Enhancer View.

4.2 In the Mood for (Genuine, Parental) Love

Love seems too complex *to* be called by duty. I could not imagine a parent telling her child that she loves her out of duty. Even if I were to imagine it, I would say that the parent does not truly love her child. 'Truly' stands for loving out of genuine affection. It is true that sometimes, the best way to act is to comply with a duty. When we ought to Φ because we are conforming to a duty to Φ (*R*), it spkeas good of us that we *comply* with *R*.[165] This means that one's explanatory reason why Φ-ed is the very *R*. For example, I believe that it talks better of Aida if she keeps her promises because she made a promise, not

[162] S Matthew Liao, 'The Right of Children to Be Loved' (2006) 14 Journal of Political Philosophy 420, 425 [emphasis added].
[163] See 2.2.
[164] Liao, *The Right to Be Loved* (n 9) 111–120.
[165] Joseph Raz, *Practical Reason and Norms* (Second edition 1999, Oxford University Press 2002) Postscript.

because her tarot cards told her to. Even if she keeps her promise, she does it for the wrong kind of reason. I am aware that I am entering into the murky domain of whether conforming to obligations implies complying with them. Although the response will remain unbeknown to us here, I hold true that sometimes complying with a duty talks better of us than plain conformance.

Genuine love, however, seems to represent the opposite case. Love requires *spontaneity* to be valuable. The only way by which true love can be explained is by a non-dutiful motivation. Even if parents had a duty to love their children, this would demand them to conform to the duty but not to comply with it. This genuineness is what makes love particularly complex. It is not only the case that love is phenomenologically difficult to be created by will and even more difficult to be commanded by duty. The crucial distinction lies in the fact that while certain attitudes, emotions, states, or actions might hold greater value when driven by duty, love loses its value when it is driven by obligation. Or at least this is the view defended here. A view I have not seen defended elsewhere.

It must be noted that parental love is different from friendship or romantic love. It presupposes an asymmetry between parents and children. As a parent, one does not love an autonomous and equal person as one loves one's partner or friend. A parent loves someone whose, at least for the first years of life, both material and spiritual life depend on her. Vulnerability, thus, plays a major role in parental love. Unlike other kinds of love, parental love does not imply reciprocity; one's one-year-old baby does not love, but one might, and probably ought to, love her. This demands more constancy and unconditionality than romantic and friendship love.

Parental love is intimately related to responsibility. Luc Bovens' explanation of love as agape captures well this responsible way of loving. For Bovens, there are three models of love: *eros, fusion*, and *agape*.[166] Eros reflects the kind of love for the (physical, intellectual, emotional, and so on) features of the loved one; fusion reflects love as the creation of one shared agency constituted of two individuals – the lovers;[167] and agape, in a third vein, reflects love as unconditional and self-sacrificing.[168] This latter model of love matches with parental love. Parents sometimes feel a special requirement to love their children. Usually, the required constancy comes with many costs. In parental love, the sense of responsibility is higher, given the nature of the relationship. This could amount to saying that parental love is grounded in a duty to love.

I still believe that spontaneity should not be lost in the agape picture of love. Although Boven's picture might make room for the existence of a parental duty to love, parental love still has an irreducible,

[166] Luc Bovens, *Coping: A Philosophical Guide* (Open Book Publishers 2021) 48-59.
[167] As Dorothy Fields and Jimmy Mchugh's song, *In the Mood for Love*, says, 'We've put our hearts together, *now we are one*, I'm not afraid!'.
[168] Luc Bovens, *Coping: A Philosophical Guide* (Open Book Publishers 2021) 55-59.

spontaneous nature. Parents have many responsibilities towards their children. Even if we consider loving them as one of these, this might just be a *standard of assessment* rather than a correlative, directed duty to love. Parents who do not love their children are certainly bad parents. This fact, however, should not necessarily correspond to ground children's correlative claim-right to demand or oblige their parents to perform primary or secondary duties to love. Children should certainly feel and express certain emotions if appropriate. A child can appropriately condemn her parent and express it to her. But this does not imply that she has a valid claim to ask her parent to conform to the duty to love her.

My worries regarding MRTBL appear when it functions in a bipolar, claimable relationship. That is, my argument points toward the issue of the existence of a directed duty correlated with MRTBL. Moreover, I am open to the idea that parents might have a non-directed duty to love their children.[169] This might amount to a duty to oneself or even to a duty to express love to their children. However, even if parents have these duties, I argue that if the children have MRTBL, it undermines their ability to be genuinely loved. Therefore, I believe that MRTBL is self-defeating.

4.3 Holder-Relative Disvalue

Let us start with the following basic idea: it is questionable to argue that adults have a right to be romantically loved. This is the case because having the option of holding other people under the duty to love them is disvaluable, especially for the person who has the right. In other words, having a right to claim to reciprocate love implies losing the option to be genuinely loved. Joseph Raz emphasises this when he asserts that love cannot be explained by duty, but [o]nce a duty to reciprocate love is recognized love turns into something by which one is *put under the power of others*: by loving us they force themselves upon us'.[170]

Having the claim-right to hold people under the duty to reciprocate one's love would defeat the possibility, or it would dramatically reduce the chances of being loved. Love is precisely valuable because it is not motivated by duty. In the sense that 'love speaks of a spontaneous, unplanned response to another'.[171] Thus, genuine love can only be moved by non-dutiful motivations. This is why the idea of having a 'right to be loved' is absurd. If the duty to love someone were intelligible, to have the claim to hold someone under the duty to love would pervert the very idea of adult love. But what about the children's right to be loved by their parents?

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[169] John Gardner argues for the existence of a 'distinct [parent's] duty to love their children'; John Gardner, *From Personal Life to Private Law* (Oxford University Press 2018) footnote 11, 25. In the same footnote, Gardner points out that Liao discusses the fact that this duty is 'owed by parents to children', which amounts to MRTBL. It does not remain clear whether Gardner believes that MRTBL exists or not. My intuition is that there is no reason to conclude that he does.
[170] Raz, *Ethics in the Public Domain* (n 7) 12 emphasis added].
[171] ibid.

Raz, despite objecting to the existence of a general duty to reciprocate love, makes an exception with parental love. He affirms that parental love is 'demanded of us by moral duties'.[172] He argues that parental love is different from other forms of love because it is not entirely based on emotions but rather on a non-emotional attitude that can be commanded. His rationale is not explicit. But the point Raz makes is that parental love must be unplanned but does *not* have to be spontaneous. This is perhaps explained by the fact that he understands love as a non-emotional attitude.[173]

I favour Raz's understanding of parental responsibilities in general. It has a grain of truth. Being a good parent implies conforming to one's moral attitudinal duties towards one's children. I do not think, however, that this is enough to explain what it takes to love one's children genuinely. Or what it takes to feel that a child is genuinely loved by her parents. I share with Liao that children need love to have a good, flourishing life. However, I believe that both Raz and Liao's explanation of how we could help children be more loved strip the children's options to be genuinely loved.

Children's capacity to be genuinely loved should not be undermined. This probability increases once we argue that children ought or can be loved for a normative reason. Although I could agree that there is a big part of parental love that can be guided by duty, the emotional part should be untamable by normative reasons. Liao agrees with me on the fact that parental love, at least partly, is emotional.[174] It flows from this that guided love is not genuine love. Even if being guided by a directed duty to love were phenomenologically possible, I would still affirm that children's holding of MRTBL *deprives* them of the option of being loved out of love. Or that MRTBL makes it *less likely* that children are genuinely loved. This is because love by duty, like love by need, is not genuine love. Thus, holding a claim-right to be loved devalues parental love.

It is true that being 'loved' by need, or out of MRTBL's recognition, can be better than not being loved. If one compares a child who does not receive genuine love to another one who is 'loved' because she is in need of love or because she has MRTBL, it seems plausible to say that she will have more chances to develop those necessary conditions to have a good life. However, she would still have lost her capacity to be genuinely loved. This is why MRTBL cannot be justified because it contributes to assuring its holder a better life. But if the cost of MRTBL, depending on whether it is recognised or not, is that children lose their passive ability to be genuinely loved, MRTBL loses its appeal by reducing it to an *absurd*. If the parent recognises MRTBL, and she is sufficiently morally diligent to be moved by what appears to be the correct

[172] Raz, *Ethics in the Public Domain* (n 7) footnote 10, 13.
[173] For Raz's rather inconclusive explanation of why parental love is an exception, see ibid 10–14.
[174] Liao, *The Right to Be Loved* (n 9) 103.

moral reasons, she should love her child motivated by MRTBL. This love, however, would be pretended. Genuine love implies not being moved by '*rightsful*'[175] or *dutiful* motivations.

One might object that parents, whilst acknowledging the existence of MRTBL, may decide not to be moved by it and love their children spontaneously. Hence, parents such as these would conform to the duty but not comply with it. This seems to amount to genuine love on the account of love offered here. I would say, however, that the mere fact of having considered the child's MRTBL, or of being able to consider it, makes parental love *suspected* of being pretended. That is, it covers the parent's expression with a suspicion of having been moved by MRTBL. Recall that this is a holder and right-oriented objection to MRTBL. What matters is whether having MRTBL entails disvalue for the holder. Thus, the latent suspicion that one's parent might be loving you because of MRTBL is sufficient to ground the disvalue of holding it.

I want to emphasise that my argument is not focused on the negative implications that having the correlative duty may have for its bearer, the parent. Instead, it focuses on the negative implications that having the right would have for its holder, the child. The argument challenges the underlying assumption that Liao makes regarding the value of rights. Unlike Liao, I do not believe that having MRTBL would be non-instrumentally valuable for the right-holder. It is precisely because MRTBL would give children the claim to be 'loved' that I believe it defeats children's interest in being loved. Liao asserts that children need to be loved. However, children also need to be able to be genuinely loved. Once we acknowledge that MRTBL exists, this possibility disappears, or at least it diminishes the likeliness. This is what makes MRTBL holder-relative, non-instrumental disvaluable. However, can MRTBL exist if it is disvaluable? Or can MRTBL be valuable for other reasons?

4.4 Can There Be a Holder-Relative Disvaluable Moral Right? The Non-Existence Objection

If MRTBL is non-instrumentally disvaluable for its holder, the Implicit Premise of the case for MRTBL seems impossible to be met. Thus, the conclusion that MRTBL exists does not follow. In other words, if having MRTBL makes it impossible, or highly unlikely, for children to be loved, children do not have MRTBL. This talks about the relationship I am eliciting, which I believe MRTBL's argument is implicitly assuming, between the *existence* and *value* of moral rights. It seems reasonable to say that if it is true that a moral right is disvaluable in this world, there cannot be another world in which it can be valuable. So that opens the following question: can MRTBL exist if having it would be holder-relative, non-instrumentally

[175] See footnote 56 in 2.2.2.

disvaluable? If the answer is negative, and there is no reason to argue that MRTBL exists, my argument seems irrelevant to argue against the Standard Picture of Rights. We may call this objection, the Non-Existence Objection (NEO).

There are two valid ways in which my argument can mutate to respond to NEO. Let me go in turn from the less to the more plausible response. First, I could accept that MRTBL does not exist because it is disvaluable for its holder. However, I could still assert that the disvalue of MRTBL can exist. There can be a possible world where, although MRTBL does not exist, people can mistakenly believe that it exists. This can be enough to ground the same disvalue that MRTBL would ground if it existed. This saves me from NEO. Even if MRTBL did not exist, its potential deprivation is realised by the parents' beliefs. A world where MRTBL does not exist, but parents mistakenly believe that it does.

Although this could save me from NEO, this entails another potential, and probably more critical, objection. Note that parents' beliefs could be seen as a *sufficient* condition for the disvalue to obtain. The same deprivation of genuine love can obtain by a mistaken belief that parents have. The problematic implication is that it could take from MRTBL its relevance in the explanation of the deprivation. Why is MRTBL relevant if it is neither necessary nor sufficient for the disvalue to exist? In one sense, this objection could be rather trivial. All events, facts, objects, reasons, harms, and so on may depend on beliefs in this way. Harms, for example, might be done by way of defective or false thinking. If I mistakenly believed that my friend lied to me, even if my friends did not lie to me, it would be sufficient to harm our relationship. The peculiarity of my case is that what it is being undermined is the loving status of someone because at least some people mistakenly believe that she has a right. I would not be dismayed if this were the ultimate upshot of my argument. That is, beliefs are those doing the real, important job. The point is that these would be some peculiar and determined kind of beliefs. Moreover, people must possess the idea of MRTBL and the idea they ought to conform to it.[176]

There is, however, a second way to escape from NEO. Perhaps the disvalue that I am pointing out of MRTBL is only *pro tanto*, and there is another set of facts that makes MRTBL-holding all things considered valuable. Perhaps MRTBL is valuable because it is good for other people rather than its holder. In this scenario, MRTBL can be all things considered valuable, at least because of two reasons. First, it can be justified because MRTBL promotes a practice of love, which everyone, rather than the right holder, will benefit from. This argument is rule-consequentialist.[177] The disvalue that the right-holder suffers is

[176] See footnote 45 in 2.2.1.

[177] There might also exist act-consequentialist arguments. For instance, MRTBL might deter people from interfering in parental loving relationships. Consider the following curious example. On a Halloween night, Voldemort bursts into James and Lily's cottage to kill them and their newborn, Harry. Upon recognising that Harry has MRTBL, Voldemort realises that killing his parents would end their loving relationship, violating not only Lily and James' right to life, but also Harry's MRTBL. Thus, Voldemort leaves Godric's Hallow's without killing them. I thank Santiago Carbajal and Tomas Churba for discussions on this and other related topics.

overridden by how consequentially contributes to a practice of loving. Second, it can also be grounded on the value that children obtain when another child exercises her right to be loved. Although this exercise is disvaluable for the exerciser, it is all things considered valuable because many other children will be indirectly loved because of certain effects on the motivation of their parents.

We have two possible conclusions flowing from the argument that MRTBL is of holder-relative, non-instrumental disvalue. On the one hand, MRTBL's self-defeatingness implies its non-existence. This conclusion would have the value of rebutting Matthew Liao's claim for the existence of MRTBL. This would be a response not only to Liao's, but any other defence of the existence of MRTBL grounded on a right-holder-oriented justification. If my argument is correct, the existence of MRTBL is absurd.

This conclusion, however, would not affect the Standard Picture's value assumption. It would actually reconfirm that rights, at least this moral right, cannot be disvaluable. Henceforth, I offer a second, twofold conclusion. Although MRTBL is non-instrumentally disvaluable for its holder, MRTBL exists because (i) there is a possible world where people *mistakenly believe* that MRTBL exists, thus creating the same kind of holder-relative disvalue that it would be created in the hypothetical but impossible world in which MRTBL would self-defeat; or (ii) because while it is non-instrumentally disvaluable for its holder, its existence is justified by the protection of other people rather the right-holder; namely, the children or adults that obtain a benefit for living in a practice where MRTBL exists or is exercised.

Either of the conclusions supports the project of this chapter. The first conclusion, if true, would prove the implausibility of arguments such as Liao's to ground MRTBL. Moreover, this hides an underlying consideration I have already hinted elsewhere in this thesis. That is, some dimensions of our lives should remain out of the protective normative reach.[178] Perhaps MRTBL does exist for any of the reasons offered. If this is true, my critique of the Standard Picture gains more force. That is, the Standard Picture is wrong in assuming that right-holding cannot be non-instrumentally disvaluable for the right-holder.

[178] I offered a similar argument in 3. Gardner, for example, is reluctant to accept rights-talk in relation to some dimensions of normativity such as love given its 'adversarial overtones'; see Gardner, *From Personal Life to Private Law* (n 169) 53. Compare, however, footnote 168 in 5.3.

5. Conclusion

Rights are considered valuable as they offer protection to their holders. According to most right-theorists, having a right is of holder-relative, non-instrumental value. Moreover, for the Standard Picture, although right-holding could be of neutral value, it cannot be of holder-relative, non-instrumental disvalue. On the contrary, I proposed that both legal and moral rights can be of holder-relative, non-instrumental *disvalue*.

The first implication is that the Standard Picture is misguided. The Right-Holding as an Enhancer View – both the Necessary Value and Impossible Disvalue Horns included – loses appeal. I advanced three examples of rights to support this claim. Two legal rights, and one moral right. Each of these examples reflects a way in which this kind of disvalue can obtain: in order of appearance, the distortive, disabling, and self-defeating ways.

The rights' examples touched on three of the most transcendental dimensions of life: *death*, *speech*, and *love*. One might think that my conclusion should only limited to these aspects of life. But this is not my claim. I chose these rights precisely because of their relevance *not* because of their uniqueness. They serve to signal the ways in which many other rights can obtain the same kind of disvalue that these three entail. Proving this, however, goes further the length of the thesis.

A further political implication is that we should not have those rights that entail this kind of disvalue. At least, those here analysed. This seems to hold regarding legal rights. But some moral rights, at least on the fundamental level, do not depend on people's expectations and recognition. Some of them are not even waivable. I believe that the moral right analysed here is an instance of this. In these cases, if having one of those entails a holder-relative disvalue, their existence would not be staggered. It would prove, however, that there can exist a non-instrumentally disvaluable moral right, which is all things considered valuable because of how it contributes to other people *rather* than the holder.

One last implication is subtly proposed by the thesis. If my argument is accurate, and the Standard Picture is confused about the value of right-holding, then any of the common explanations of *rights' nature* might need to be adjusted. Perhaps rights are not best defined as normative protective objects. This could mean that the first chapter ought to be rewritten as well. This enterprise, however, is beyond the scope of the thesis. While I am confident that a supporter of this claim can rely on the argument defended in the thesis, the truth about the nature of rights might be perfectly independent of my current argument. My focus here was on the value of right-holding; how having a right, both legal and moral, can be bad for the person who has it. I would be more than satisfied if I was somehow successful in that.

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