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Getting Rights out of Wrongs

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Abstract: Sometimes, we gain new moral rights by acting wrongly. Sometimes, we gain new moral rights (in addition to restitution rights) from other people acting wrongly. This paper presents a typology of these rights. It then analyses why some wrongs can change the moral ballgame in this way to give us new rights, and other wrongs cannot. Finally, the paper examines two ultimately unsuccessful strategies to resist this analysis of wrong-generated rights. The first strategy pertains to the defeasibility of rights. The second strategy pertains to their conditionality.

Introduction

We have some moral rights to act wrongly. We have moral rights to say mean things, to be wasteful, and to join xenophobic groups, for example. These are not Hohfeldian moral permissions. They are claim-rights against interference which protect us in acting in ways that we shouldn't act (see Waldron 1981; Raz 2009, chs 14-15).

More interestingly, sometimes, we *gain* moral rights *by* acting wrongly and only by acting wrongly. Equally, sometimes, we gain moral rights from other people acting wrongly and only from them acting wrongly. These rights are also claim-rights against interference. They are rights either to continue unencumbered to do wrong or to enjoy the fruits of our own or others' wrongdoing. Some of these rights are uncontentious. Others, however, are both contentious and morally complex, such as the relationship rights that we can sometimes gain after forming connections we never should have formed.

This paper presents a typology of the rights that we can get through wrongdoing. It builds up a profile of the contexts in which new wrong-generated rights seem to emerge when we do wrong ourselves (Section 1) and when others do wrong (Section 2). The paper then analyses why some wrongs change the moral ballgame to give us new rights, and others do not (Section 3). That analysis focuses on a) how legitimate expectations can sometimes grow out of illegitimate expectations; b) how personal investments, such as labor, skills, resources, genes, and identity, can make a moral difference; and c) how we can have rights that piggyback on others' interests even against a backdrop of wrongdoing. Finally, the paper explores two ultimately unsuccessful strategies to resist this analysis of wrong-generated rights (Section 4). The first strategy focuses on the defeasibility of rights. The second focuses on the conditionality of rights.

1. Getting Rights from Doing Wrong

1.1 Cases of Wrongdoing

Let me demarcate my subject by detailing first the kinds of rights that I'm *not* talking about. I'm not talking about the non-activated rights that we have before we act wrongly, which are triggered only once we act wrongly. We have non-activated due process rights before we act wrongly, which we can assert only once we act wrongly or are suspected of acting wrongly in ways that (properly) interest the law.¹ Similarly, we have non-activated rights to be fed, sheltered, and treated humanely when we are in prison, rights which we can assert only once we are incarcerated for an offence. These moral (and legal) rights compel other people to continue to treat us decently after we act wrongly. These are rights that we should get, or we should be recognized as having, once we act wrongly.

¹ Of course, the law might be mistaken when it says we do wrong. Let's bracket that possibility.

There are also non-codifiable moral rights that we can assert only once we act wrongly. For instance, if we do serious wrongs – wrongs which no claim-right could protect us in doing – then we have a moral right to contribute to public debates about how to treat people who have committed serious wrongs. Among other things, we have, in virtue of our serious wrongdoing, a certain perspective, experiential knowledge and insight into how society should view and respond to wrongdoers' behavior.² Once again, these are rights that we have, or should be acknowledged as having, only once we act wrongly.

The rights that I am discussing in this paper are more complex than this. Sometimes, once and only once we act wrongly, we gain *new* moral rights that did not pre-exist our wrong in some non-activated form. These rights are instead *newly created* by our wrongdoing. Here are several examples, which I offer undefended until Section 3.

Let's begin with a case that relates to rule-breaking as well as property use:

1. *School Building*: A community has no moral right *ex ante* to build a school with scarce public funds which is structurally sound but in breach of the necessary planning regulations. However, the community and the school users have a moral right *ex post* to keep their school once it is built, especially if tearing it down would waste public money or leave the community without a school.³

This case is synchronic: the community and school users have moral rights to keep their school as soon as it is built. Their *ex post* rights do not depend on the school having existed for some time.

Whereas *School Building* is a synchronic case, my next property-related case, and many of the other cases I will present, are diachronic, which is a complicating feature, as I explain below:

2. *Treatment-taking*: Sameer has no moral right *ex ante* to steal the first dose in a life-saving course of treatment that he needs, especially if other people need it too, the resource is scarce, and a fair procedure allocates it. But, *ex post*, once he has started the course, he has a moral right to continue, especially if he will die a slow, painful death from withdrawal (where previously he would have died quickly and painlessly) and the remaining treatments in the course cannot be repurposed.

And, here is a third property related case:

3. *Squatting*: Suppose that Hatti, who already owns a decent home, decides to squat on unoccupied, ecologically fragile land for several years. While some readers might think that Hatti does no wrong in doing this, the common view, I take it, is that she does do wrong and has no moral right *ex ante* to reside on this land that does not belong to her and may be damaged irreparably by her presence. If, however, she squats unimpeded for a long enough time (and we can debate how long that must be), then she has a moral right *ex post* to remain, or at least to be compensated if she is removed.⁴

² I thank Joseph Raz for this example.

³ I thank Clare Chambers for this case.

⁴ Anna Stilz argues for a presumption in favor of repatriation and return in the first generation of wrongful settlers. She holds that this presumption extends to second and higher generations of settlers in some cases. See Stilz 2017.

This kind of case has many variants. For instance, if we migrate to a country illegally and, in time, build up a life there, then we can come to have moral rights to remain. Of all the cases I consider, this kind is the least contentious, I presume. But, it also raises the specter of colonization, which I will address below.

Next comes a synchronic case premised on common views about valuable family relations and dependents' interests:

4. *Big Family*: Suppose that Jack and Jill, who have easy, legal access to contraception and abortion services and no conscientious opposition to such measures, decide to have a fourteenth child together. In having a fourteenth child, they act wrongly for many reasons. They reduce the time they can devote to their existing children; and they knowingly guarantee that they will have only limited time for this new child, Ramona. What they can offer her is barely minimally adequate. They also put further pressure on the natural environment as well as their society's material resources, pressure that increased with each additional child they chose to have.

Some readers might think that Jack and Jill do no wrong in having a fourteenth child. Other readers might think that they do wrong, but act within their rights because there is no upper limit to the number of children that parents have a right, in principle, to have. Parents have a defeasible right to have as many children as they like, so the thought goes. Still other readers might take the view I take, that there is an upper limit *somewhere* to the number of children that two people have a moral right to have in principle, and they have no right to have the $n+1^{\text{th}}$ child after that. Let's stipulate that $n+1$ is fourteen. This characterization of parents' rights reflects a general truth about all moral rights. At a high level of abstraction, we can speak about a person's right to property and her right to a family. But, when we unpack the content of such rights, we see that they are not just defeasible. They are also limited in scope. A person's defeasible right to property does not include, even in principle, a right to own the entire planet. A person's defeasible right to (try to) have a family does not include, even in principle, a right to insert herself into *every* family in the world or a right to knock on any given person's door and announce that she is joining their family. The same truth about scope applies to less content-sensitive rights: they have principled limits too. A person's freedom of movement does not give her a right, even in principle, to enter every space on earth. And, her freedom of religion does not give her a right, even in principle, to engage in human sacrifice.⁵

Given this fact about rights, we have in *Big Family* the kind of morally complex case that drives this paper:

Jack and Jill have no moral right *ex ante* to have a fourteenth child. But, if they do have a fourteenth child, then *ex post* both they and their new child, Ramona, immediately and persistently have moral rights to be together as a family.⁶

⁵ In highlighting this point, I aim to answer an anonymous referee who suggested that none of the cases I present actually involve the generation of new rights, but instead simply describe ordinary, defeasible rights we already have, such as the right to have a family and the right to hold property. My answer in the text stresses the fact that, while we can speak in highly abstract terms about rights to family and property which might seem to capture the cases I present, nevertheless our rights to family and property have limits which *ex ante* do not protect the kinds of wrongdoing I describe. Only *ex post*, once the moral ballgame has changed, can we speak about these wrongs – or their effects – falling within the scope of our rights.

⁶ I thank Zofia Stemplowska for this case. My claim that Jack and Jill have no moral right *ex ante* to have a fourteenth child says nothing as such about legal rights, duties, or enforcement. Rather, it means that Jack and Jill cannot appeal to their moral rights to try to shut down the conversation about their parenting choices; they

This is a synchronic case. Jack's, Jill's, and Ramona's rights do not depend on their relationship growing over time. From the start, they can assert familial rights to be together.

Here are three diachronic cases that are also premised on common views about valuable family relations and dependents' interests:

5. *Caring Kidnapping*: Stella has no moral right *ex ante* to kidnap a child, Jenny, and become her caring parent. But, if Stella does kidnap Jenny and raise her well for many years, then Stella can have a moral right *ex post* to continue to be Jenny's parent, especially if Jenny wishes it and is well-served by it. (See, for instance, Cowan 2015.)⁷
6. *Beauty and the Beast*: Beast has no moral right *ex ante* to imprison Beauty as his companion. But, if they bond together over time, then he has a moral right *ex post* to remain her companion even if her initial impulse to bond with him stems from psychological stress, provided that 1) being with him is in her general interests and 2) after receiving competent psychiatric treatment, she still wishes to be with him.
7. *Life-generating rape*: If Brett commits a life-generating rape, he has no moral right *ex ante* to be a parent to the child, Lisa, who results from that rape (even though some legal jurisdictions, including in the US, afford such biological progenitors parental rights by default) (See, for instance, CBS News 2017). But, if Brett raises Lisa well for many years, then he has a moral right *ex post* to continue to be Lisa's parent, despite the severity of his wrong, especially if Lisa wishes it and is well-served by it.

Finally, here's an example that combines common notions of property rights and family connections:

8. *Zygote stealing*: Maja has no moral right *ex ante* to break into an IVF clinic to mix her genetic material with that of a donor she admires in order to have a child, Carlos, with those genes. But, if she does have Carlos in this way and raises him well for many years, then *ceteris paribus* she has a right *ex post* to remain Carlos's parent, especially if he wishes it and is well-served by it.

These various wrong-generated rights do not so much compel other people to treat us decently after we act wrongly as give us new benefits – new claims against people – precisely because we have succeeded in acting wrongly.

The idea that wrongs can generate rights is not contentious when the wrong in question is rights-protected. For instance, a conjoined twin arguably has a right to separate

are legitimately open to censure from their existing children, family, friends, and others for having yet another child.

⁷ In discussions of this paper at Nuffield College, Oxford, and the Institute of Philosophy in London, I was pressed to consider whether a person who commits a kidnapping could really be a caring parent. Could such a person really be committed to close, supportive, nurturing relations? Could she really have a child's interests at heart, given that she wrenched a child out of a caring relationship (let's suppose)? In reply, we must look at her reasons for committing the kidnapping, which need not be nefarious, and we must look at her conduct in her parenting role to judge whether this concern is warranted. Although, initially, she might fail a test for sincere commitment to caring relationships, she can nonetheless be a competent, attentive parent, and can grow to have a sincere commitment in time.

herself from her sibling even if the sibling objects. In doing this wrong, she gets new rights to act independently of her sibling, including rights to bar her sibling from sharing in experiences that she previously could not have barred her from sharing. What makes most of Cases 1-8 contentious is that the wrongdoers have no right to do the things that set in motion the train of events that produce new rights for them.

Put differently, in Cases 1-8, the wrongdoers change either their own interests or other people's interests in ways they have no right to do. And, as a result of changing those interests, new rights emerge including sometimes new rights for the wrongdoers. For instance, in *Treatment Taking*, although Sameer has the same powerful interest in having the course of treatment before and after he takes the first dose, after he takes that first dose, he eliminates anyone else's interests in getting that course of treatment. Similarly, in most of the relationship cases above, the wrongdoer alters third-parties' interests in the relationship with the victim, while building up the link between his own interests and the victim's interests in their relationship.⁸

1.2 Causal Connections

In Cases 1-8, I describe the causal connections between the wrongs and rights in non-technical terms. Here and below, I speak loosely of rights 'arising as a result of', 'stemming from', and 'flowing from' wrongdoing. Despite the vagueness of these phrases, they pick out tight causal connections. This becomes clear when we consider a contrast case. Suppose that, as a consequence of committing fraud, Tom meets his life partner in prison and they have a child together. Although his fraud enabled him get the rights of being a life-partner and a parent, the causal connection between his fraud and those rights is tenuous. Tom's fraud plays a contingent role. In principle, he could have met his partner in some other, non-wrongful way.

By contrast, since Jack and Jill have 13 children already, they have no non-wrongful way to get parental rights over a fourteenth child, Ramona. Their wrong is causally necessary, and central, to gaining parental rights over Ramona. Similarly, Hatti has no non-wrongful way to get rights over land that she neither owns nor may buy. Her wrong is causally necessary, and central, to her getting rights to remain on that land. Likewise, if a doctor won't prescribe the scarce life-saving course of treatment that Sameer needs, he has no non-wrongful way to get it. His wrong is causally necessary, and central, to his gaining the rights to continue the course of treatment. So too, Beast, as a beast, has no non-wrongful way to get Beauty to be his companion. His wrong is causally necessary, and central, to his gaining rights to be her companion. And, Maja has no non-wrongful way to have a child with the person she admires. Her wrong of stealing the genetic material is causally necessary, and central, to her gaining parental rights over Carlos.

Admittedly, some of the wrongs in Cases 1-8 seem more loosely linked, causally, to the rights they can generate. But, that looseness depends on the way we specify the case. For instance, Stella has no non-wrongful way to become a parent to Jenny, but she probably does have a non-wrongful way to become a parent to some child. Similarly, Brett, who commits the life-generating rape, has no non-wrongful way to become a parent to Lisa, but probably does have a non-wrongful way to become a parent to some child. The community has no non-wrongful way to build their new school here and now, but possibly might get planning permission in the near future if they wait. In all these cases, we might say the agents do have non-wrongful ways to achieve what they want, but their success, admittedly, depends on specific conditions being met.

⁸ I thank Patrick Tomlin for highlighting that this interest-eliminating mechanism is what drives many of my cases.

The causal link between the wrongs done and the rights they generate might seem most tenuous in diachronic cases where several, contingent effects of the wrongs seem to play some role in changing the interests that then yield new rights. To show that even in diachronic cases wrongs can be the sole or primary cause of new rights, consider the following:

9. *Lock-Up*: Raja has no right *ex ante* to lock Marie and herself in a room and throw the key out the window so that she can enjoy various relational benefits with Marie that she couldn't before. But, if Raja does lock herself up together with Marie and throw the key out the window, then *ex post* Raja starts to have new claims upon Marie which eventually solidify as rights. These claims start off small. After a brief period in which Marie might be warranted in shunning Raja, Raja then has a right that Marie engage with her decently. Raja's claims become greater the longer the two of them wait for rescue. She has a right that Marie contribute her brain-power and labor to the task of getting out. She has a right that Marie give some thought to her needs in how Marie behaves within the locked room. In time, Raja even has a right that Marie share any food or water she has with her.

In this case, as in Cases 1-8, Raja gets new rights causally *because* she did wrong. She gets her new rights normatively *in spite of* doing wrong. This is the main contrast between these cases and the non-activated-rights cases noted at the outset. Wrongdoers gain due process rights, rights to decent treatment in prison, rights to contribute to public debates about how to treat wrongdoers, and so on, not just *causally* but *normatively* because they acted wrongly. They get the rights *in virtue of* acting wrongly. In the cases I am considering, wrongdoers gain rights normatively *despite* having acted wrongly in ways they had no right to act.

Before tackling the obvious objection that at least some of the wrong-generated-rights in Cases 1-9 are not real rights, let me fill out the profile of the contexts in which wrong-generated rights seem to emerge, by presenting cases in which other people do wrong.

2. Getting Rights from Other People Doing Wrong

As in Section 1, my focus is not on non-activated rights, which we can assert only once other people do wrong. Examples of such non-activated rights include the following. Only once a person does wrong can third-parties assert their moral rights to intervene. Only once someone wrongs us can we assert our rights to compensation and restoration. Similarly, only once the electorate does wrong by electing an incompetent leader can that leader assert the moral and legal rights of that office. Likewise, only once an employer does wrong by appointing an incompetent person to a post can that person assert the moral and legal rights of that position.

The cases driving this paper are, once again, more morally complex than this. They concern particular rights that did not pre-exist the wrong in some non-activated form. Instead, once other people do wrong, we can gain new rights that we did not have beforehand in a non-activated form. These wrong-generated rights can come either from other people wronging us (type A) or from other people wronging other people (type B). (We might also gain rights from people doing wrongs that do not directly wrong anyone, such as rights that might come from someone damaging the environment. But, I'll set that possibility aside.)

Here's an example that includes both type A and type B wrongs, premised on common assumptions about family bonds:

10. *Forced marriage*: Two teenagers, Aneeta and Mak, have no moral right *ex ante* to assert spousal claims over each other. But, suppose that they are forced by their families to marry. (All 50 US states allow underage marriage with parental approval. 25 US states set no minimum age for marriage where there is parental approval and a judge's consent. Sometimes, parental approval amounts to parental pressure. (See van der Zee 2018.⁹)) Suppose that, in time, Aneeta and Mak bond together, have kids, and affirm their relationship. Their families have wronged them (type A) and have wronged their spouse (type B). From those wrongs, Aneeta and Mak gain at least some of the moral rights *ex post* that spouses have against each other since their lives now intertwine legally and socially. They also gain at least some moral parental rights in relation to their kids, and some moral rights against third-parties who might interfere. (Their families might also gain moral rights from their relationship, which is another case of people getting new rights by doing wrong.)¹⁰

Here is a case involving discrimination:

11. *University Student*: A 19-year-old white man, John, has no moral right *ex ante* to be allocated an undergraduate place through a university illegitimately discriminating against better-qualified women or people of color. But, if the administrators' discrimination only comes to light in John's final year, he has a right to keep his place and complete his degree. The university would do an additional wrong if it expelled him as an improperly admitted student.

Here is a property-related case, which turns on accepting the principle of *innocent purchase*:

12. *Innocent cyclist*: If Jess buys a bicycle from Bruce without knowing or having reason to think that he stole it from someone else, then Jess has a moral right to keep the bicycle. Causally, Jess's right to the bicycle exists because Bruce stole it. (Of course, Jess's right conflicts with the original owner's right, which possibly should take priority.)

Next, here are four of the cases from Section 1, recast to show that the victims gain new moral rights because of the wrong done to them (type A):

13. *Caring Kidnapping*: Jenny's right to stay with Stella exists as a result of Stella doing the wrong of kidnapping her and raising her undetected for many years.
14. *Beauty and the Beast*: Beauty's right to remain with Beast follow from Beast imprisoning her.
15. *Life-generating rape*: Lisa's right to stay with Brett arises, casually, as a result of Brett committing life-generating rape and then raising Lisa for many years. (Indeed, all of Lisa's rights flow from that wrong since her very existence depends on it.)

⁹ In most cases of child marriage, the parties are an under-aged girl and an adult man. Those cases look more like abusive versions of *Beauty and the Beast* than like *Forced Marriage*.

¹⁰ As this case shows, we can gain new duties when we are wronged: Aneeta and Mak gain duties both to each other and to their kids.

16. *Zygote-stealing*: Carlos's rights in relation to his parent, Maja, exist because Maja did the wrong of stealing genetic material. (All of Carlos's rights flow from that wrong since his existence depends on it.)¹¹

Finally, here's a case involving both type A and type B wrongs, premised on common views of both property rights and family relations:

17. *Gene-mix-up*: If an IVF clinic either mismatches the genetic material of two couples, or switches the couples' embryos during implantation, then the couples gain new moral rights over, and duties to, each other and the resulting children, rights and duties they only have because of the wrong done by the clinic.

With these various cases on the table, let's analyze the phenomenon of wrong-generated rights.

3. Expectations, Investments, and Piggybacking

Many of the above cases are controversial, including some of Cases 10-17 in which we can get new rights from other people doing wrong. Consider, for instance, *Innocent Cyclist*. Instead of embracing the principle of *innocent purchase*, we might embrace the competing principle that someone's title to some property is only as legitimate as the title of the person from whom she acquired that property. According to that principle, since Bruce doesn't have a right to the bicycle, Jess doesn't get a right to it when she buys it from him.

However, not all the above cases are controversial. Sometimes, justice demands that we get new rights at least when other people do wrong, even in morally complex cases. For instance, consider *Forced Marriage*. Aneeta and Mak's marriage should not exist. Hence, ideally, they should not be able to assert moral rights over each other. Indeed, they arguable do something wrong when they do assert their spousal rights over each other. Nevertheless, *ex post* Aneeta and Mak *must* get some new moral rights (and duties) over each other, third-parties, and any kids they have. The wrongs they endure fundamentally change their interests. We would leave them in a radically morally compromised position, adding insult to injury, if we said that they gain no new rights (other than restitution rights) from the wrongs done to them. Similarly, justice demands that both Beauty and Jenny gain new rights from their situations. The kidnapping and concealment they endure fundamentally changes their interests. They too would be in a radically morally compromised position if they didn't gain significant, new moral rights from the wrongs done to them.¹²

¹¹ A potential objection against some of my examples of wrong-generated rights is that they trade on our intuitions about dependents and, particularly, children. In reply, cases involving children are useful, as they do not invite the knee-jerk intuition that freedom of dissociation should prevail. Also, not all my cases involve children. Beauty, while vulnerable, is not a child. *Forced Marriage* could be recast as a case involving two of-age people who are forced to marry.

¹² In *Moral Repair*, Margaret Walker makes several observations that align with my view that we must privilege victims' interests. Among other things, she observes that *moral repair* is centrally about putting things right for the victim who suffered the wrong. In cases of shattering harm, no wrong is ever undone. It is at best a sequel to the wrong that either 'does right' by the victim or not. 'It's important to remember that when people behave wrongly and hurt others, we don't always think, or only think, of punishing them. Spouses and lovers are unfaithful, children selfish, associates unfair, friends deceitful; there are slights, insults, lies, acts of indifference, betrayal, aggression, or violence among us, and in some instances these dent or shatter lives. While we do sometimes seek to punish people who wrongfully harm us or others (or wish that we could), there are a lot of alternatives to punishment that in fact are always there, and we often need and use them. Some of these responses exclude each other while others can be combined or deployed in sequence.' (p.9); '...what victims seek and deserve...has to do not only with what the victim or society can do to the offender, such as demanding accountability, voluntary or otherwise, but also with what the victim needs the offender or the community to do

Cases like these show that there is nothing about morally complex, interest-changing wrongs *as such* that prevents those wrongs from generating rights, even when victims' assertion of those rights is deeply morally problematic. This gives us one plank in the defense of the more contentious claim that we can get new moral rights when we *ourselves* do serious wrong, even in morally complex cases like *Caring Kidnapping* and *Beauty and the Beast*.

The key question is: If the moral ballgame does change sometimes once we or others do wrong, why does it change? Why do we get new rights in those cases despite the serious wrong done? And, why does the moral ballgame clearly stay the same in other cases, like the following:

Poisoning: If Souz starts slowly over time to poison Zak indefensibly, she doesn't then get a moral right to carry on poisoning him until she has killed him. Other people have a duty to stop her.

Inciting: If Bo starts to spew inciting speech that even the broadest notion of free speech cannot protect, and he continues unimpeded for a long time, he doesn't then gain a moral right to continue fomenting violence until he starts a riot. Other people have a duty to stop him.

Explaining precisely *why* the moral ballgame changes in some cases and not others is difficult. First, we cannot give an exhaustive list of contexts in which the moral ballgame changes. Second, people's intuitions about cases differ. One person might think *Poisoning* is sufficiently morally akin to *Treatment-taking* that neither wrongdoer should get a right to continue in her conduct. But, another person might stress that Sameer, in *Treatment-taking*, doesn't intend to kill anyone and is acting to save his own life. Third, no single factor makes the difference in all cases when the moral ballgame changes.

Nevertheless, we can advance a general explanation for why the moral ballgame changes when it does. Briefly, sometimes, it's morally worse to try to undo a wrong than to accept the situation it produces. Put differently, sometimes, a wrong changes people's interests so radically that we would disrespect or harm them more to ignore that change than to accept it. Other times, such as in *Poisoning* and *Inciting*, it is clearly better to try to abort the wrong than to accept the situation that it is producing. Despite the consequentialist tone, this general explanation is not a consequentialist explanation. Protecting innocent persons' interests and rights, which can change radically once wrongs are done, is what must drive us often to accept a wrong-produced situation.¹³

for her or him.' (p.19). And, 'Victims have the power to forgive, releasing themselves from a position of anguish, anger, and protest, and releasing a wrongdoer from continuing reproach and demand.' (p.28). See Walker 2006.

¹³ As this general explanation and the discussion so far make clear, this analysis of wrong-generated rights is rooted in a broadly Razian interest theory of rights, which says that we have a right when an interest or set of interests is sufficiently strong that it grounds duties in others. This is the account of rights that I find most persuasive. Although I won't explore the will theory of rights in this paper, I suspect that wrong-generated rights operate in a fairly similar way within the will theory with a few modifications. The will theory says that the function of a right is to give a person control over another person's duty (and, one way to read that is that rights protect our particular *interest* in having control to decide whether others have to honour duties or not). Most trivially, in doing serious wrong, I can give other people new powers – new forms of control – over how I should act. I also can give other people new forms of control over how others should act. For instance, in marrying my child to another child, I give them new powers over each other, over third parties, and over me. And, in doing serious wrong, I sometimes give myself new powers over how other people should act. The reasons I can make these normative changes to my own and others' powers are the same reasons that I'll discuss here in relation to interest theory: legitimate expectations, personal investments, and piggybacking (in the sense that it matters not just to you, but to others that you have this new power).

This general explanation relies on the following premise: In ballgame-changing cases, the fact that the new rights are grounded in interests that are born out of (serious) wrongdoing does not block their generation.¹⁴ Briefly, in defense of this premise, nothing in the Razian interest theory of rights which I deploy here blocks the generation of rights that are grounded in wrong-created interests. Nothing in the theory says that interests that would otherwise be sufficient to ground duties in other people are insufficient to ground those duties when they are the fruit of wrongdoing. Admittedly, the rights they ground could be overridden or could be forfeited. But, those matters are different matters from the idea that the rights *won't come into being in the first place* if rooted in wrong-created interests. I explore these thoughts further in Section 4.

The analysis I am offering can be challenged from the opposite direction as well. A critic might say that the real issue is that the wrongdoing that features in all of my cases is irrelevant to whether the parties' interests ground rights, in the same way that the white color of a light switch is irrelevant to whether that switch turns on the light.¹⁵ In response, in all of the cases I have described, the wrongdoing is more like the electrical wiring of the switch than its color. Built into the parties' interests in these cases is the fact that they have a corrupt pedigree. With luck, the force of this point will become clearer in the analysis below.

Although no single factor changes the moral ballgame in all game-changing cases, an overlapping set of factors working in different combinations distinguish Cases 1-17 from cases like *Poisoning* and *Inciting*. These factors are: a) legitimate expectations; b) personal investments; and c) rights-piggybacking. Each of these factors highlights a way in which our fundamental interests can change significantly. Let's take them in turn.

3.1 Expectations

Most of Cases 1-17 involve people forming expectations, such as relying on property or relying on other people. In *Squatting*, Hatti relies on the fragile land that she is using unchallenged. In *Treatment-taking*, Sameer relies on the life-saving drugs he is taking, without which he will suffer horribly. In *Caring Kidnapping*, *Life-generating Rape*, and *Zygote-stealing*, both the wrongdoing parent and the child rely on each other in a long-term, mutually supportive, joint narrative. In *University Student*, John relies on the institution that is educating him. In *School Building*, the city and families rely on the school they have established.

In all these cases, the people's expectations start out as illegitimate. But, legitimacy is neither binary nor fixed. It can grow by degrees. Illegitimate expectations can become increasingly legitimate over time, especially if they are left unchecked and become integral to a person's life well-lived. Legitimacy can also change abruptly. Illegitimate expectations can become legitimate at a stroke when, for example, an authorizing agent gives us permission to do a thing which we can only do legitimately if we have that permission. When people's illegitimate expectations morph into legitimate ones in these ways, their interests become bound up in those expectations.

But, of course, illegitimate expectations cannot always morph into legitimate expectations. The wrongdoers' expectations in *Poisoning* and *Inciting* remain illegitimate as the wrongdoers progress in their nefarious projects. No one can gain a right to continue indefensibly to harm someone else simply because we have failed to stop her before now. In some cases, a party remains unimpeded because it – traditionally a state – is too powerful to be stopped. And sometimes, a party remains unimpeded because we're unaware of what the party is doing. For instance, Ariel Castro held three women captive in his house for over a

¹⁴ I thank Joseph Raz for pressing me to address this issue.

¹⁵ I thank David Sobel for this objection and for putting the point with this analogy.

decade because Cleveland authorities didn't know what he was doing. When powerful parties such as states engage in acquisitive wars or colonialism, they are akin to the person who is slowly poisoning her victim. They gain no new rights simply from the fact they haven't been impeded. However, individual members of an acquisitive state who are prodded to resettle in the conquered territory may indeed, in time, gain new moral rights to remain or to be compensated if removed.

I expand below on this idea that only sometimes can legitimate expectations arise from illegitimate expectations.

3.2 *Personal Investments*

Most of Cases 1-17 involve people investing parts of themselves, such as their genes, labor, skills, uniqueness, material resources, and personal identity. In *Squatting*, Hattie invests her labor. She also builds up her personal history around persisting in that place. In *School Building*, the city invests scarce resources, and the community families invest in the resulting school. In all the relationship cases, both parties invest their labor, skills, personal identity, and uniqueness into that relationship. In some of the relationship cases, the wrongdoer invests their genes too. In *Innocent Cyclist*, Jess invests her resources. In *Gene Mix-up*, the couples invest their genes, gestational labor, and personal identity.

Some kinds of investment, such as modest amounts of recoverable material resources and our genes, probably aren't potent enough on their own to give us new rights in cases of serious wrongdoing. But, other kinds of investment, such as caring labor or unique skill, might be. And, combinations of investments – such as genes plus extensive caring labor – probably are potent enough together to give us some rights. This is because making such investments often radically alters our own, and others' interests, and this, in turn, changes which rights we can assert.

3.3 *Piggybacking*

Third, some of the above cases involve a variant of the much-discussed phenomenon of piggybacking whereby a right-holder's own interests are insufficient to ground her rights, but others' interests in her having these rights are sufficient to ground them. *Caring Kidnapping*, *Life-generating Rape*, *Beauty and the Beast*, *Zygote Stealing*, and even *Forced Marriage*, *School Building*, and *Gene Mix-Up* all have the structure of piggybacking. (On piggybacking, see Raz 1986, 179, 247-8; Raz 1994, 149-51, 274-5; Sreenivasan 2005; and Cruft 2013. On duty-bearing as a ground for holding rights, see Wenar 2013). By contrast, *Squatting*, *Treatment-taking*, *University Student*, and *Innocent Cyclist* do not.

Joseph Raz describes the ordinary phenomenon not as *piggybacking*, but as a *double harmony* between the right-holder's interests and others' interests in her having the rights in question. A journalist's rights to access sensitive material, enter dangerous places, protect her sources, be secure against action for libel or breach of privacy, and report freely, would lack the weight and importance they have, Raz says, if protecting the journalist's interests did not also serve society's interests in a free press (Raz 1986, 247-8). Similarly, a judge's right to decide which evidence is admissible, to instruct the jury, to issue judgements, and to determine sentences would lack the weight and importance they have if the judge's rights did not also serve society's interests in a functioning corrective justice process.

Critics of Raz such as Leif Wenar and Frances Kamm point out that it is not so much the *weight* as the very *existence* of the journalist's and judge's rights that depends on

society's interests in them having these rights. Their rights are *grounded* at least partly, if not solely, in society's interests.¹⁶ Wenar states:

Whatever interest a judge has in exercising her right to impose criminal punishments, for example, it cannot be sufficient to justify the dramatic normative effects of her exercise of this right. Raz's response to this difficulty attempts to boost the strength of the judge's interest in exercising her power by drawing attention to the fact that protecting the judge's interest also protects the interests of the public. Yet this attempt to add the interests of the public to the interest of the judge merely highlights the fact that the judge's interest is in itself insufficient to ground this right (Wenar 2005, 242).

In other words, there is no double harmony in these cases since the right-holder's own interests play little or no part in grounding her rights. She piggybacks on her society's interests in her holding her official role. In referring to roles, however, Raz offers a potential route to a solution, Wenar says, which is that rights do not attach to individuals. They attach to roles.

Let's remain agnostic about Wenar's claim that all rights attach to roles, but use the two ideas that, first, a right can be grounded in others' interests; and, second, a right can attach specifically to a person's role. Armed with these tools, we can say that, even if the wrongdoers' interests in *Caring Kidnapping*, *Life-generating Rape*, and *Beauty and the Beast* can play no part in generating rights for them (or the part their interests would play is outweighed by competing factors), nevertheless these wrongdoers can gain role-related rights out of their wrongdoing when their victims' interests (or others' interests) are sufficient to ground their role-related rights.¹⁷

In *Caring Kidnapping*, *Life-generating Rape*, and *Beauty and the Beast*, the wrongdoers have significant duties to their victims. Stella has significant duties to care for, nurture, love, respect, and value Jenny whom she is raising. She has these parental duties both before and after her kidnapping is exposed. Indeed, the longer she delays exposing the kidnapping, the greater her duties become to love and care for Jenny, since the kidnapping has shaped Jenny's life course and radically changed her interests. Similarly, Beast has significant caring duties toward Beauty both before and after he frees her since his wrongdoing alienates her from her community, changes her options, and, consequently, changes her interests.

These caring duties give the wrongdoers duty-based rights to fulfil them. (For an examination of why duties are not rights, but can be protected by rights, see Cruft 2006; and Brownlee (2012) ch. 4, sect. 2.) These duty-based rights derive from the rights of the victim, who has done no wrong and who has a strong claim-right that the wrongdoer remain in this

¹⁶ Kamm observes that 'If the satisfaction of the interests of others is the reason why the journalist gets a right to have his interest protected, his interest is *not sufficient* to give rise to the duty of non-interference with his speech'. Kamm (2002), 485. Cited from Wenar (2005), 242 n.34.

¹⁷ Gopal Sreenivasan is sceptical of the idea of piggybacking even in ordinary cases involving journalists and judges, arguing that such grounds for rights instrumentalize the person as a right-holder. If a journalist's own interests are insufficiently weighty to defeat others' interests in knowing her sources for example, then '...either she has to reveal her sources or, more plausibly, freedom of the press will have to be regarded as (at least, largely) a matter of net social utility, *rather than* as a matter of individual rights.' See Sreenivasan (2005). I shall set this general worry aside while noting that, in relationship cases, it's hard to say that we protect the wrongdoer's interests purely for instrumental reasons. This is because relationships involve interdependencies. In close relationships, our rights are *intersubjective*. They are rights that we hold together. They're not group rights because, in a relationship, I have claims against you that differ from your claims against me. But, our rights as partners or as parent and child are intertwined: you cannot have your rights against me unless I have my rights against you. This fact scaffolds further the claim that wrongdoers can, and indeed must, have rights in the relationships in which their victims have rights.

caring relationship provided that a) the wrongdoer's performance in that caring role is adequate; b) their continued occupancy of that role is compatible with, or necessary to, the victim's best interests; and c) the victim has legitimate expectations and wishes that the relationship persist.¹⁸

One challenge for this analysis is legitimacy. Ordinary piggybackers such as journalists and judges undoubtedly have their role-related rights because they are legitimate occupants of their legitimate offices and have the right to perform the functions of those offices. By contrast, the (putative) rights-holders in my cases, such as Stella or Beast, seem to be illegitimate role-holders. They seem less like real judges and more like the person who grabs a judge's robe from chambers, sits behind the judge's bench, and dispenses justice competently for many years before being discovered.¹⁹ My cases seem to require us to ignore the value of having correct procedures for legitimate role-occupancy. Correct procedures not only promise quality control, expectation-satisfaction, predictability, uniformity, coordination, and accountability, but also satisfy some demands of justice.

However, as I suggested above, legitimacy comes in degrees and can either change over time or morph abruptly. Stella and Beast start out as illegitimate occupants of their roles. But, they can grow in legitimacy over time, especially if the people most closely affected - their victims - affirm their legitimacy.

Moreover, sometimes, correct procedures matter less than we suppose. People are most likely to enjoy growing legitimacy when their expertise, skill, competence, and other distinguishing features matter more than the correctness of the procedures through which they come to occupy their role.

One context in which correct procedures matter less than unique skills are emergencies. In emergencies, competence is king. If an epidemic breaks out in a war-torn country, someone with medical training but no practicing license has a duty-based claim-right to treat suffering people around her. Her moral right to act without a license derives from the needy people's rights to assistance.²⁰ Similarly, someone with lifeguard training, firefighting skills, CPR training, self-defense training, or insider knowledge, who is not formally authorized to act, nonetheless can have duty-based rights to act in emergencies, and those rights derive from others' humanitarian rights to assistance.

Even in some non-emergency contexts, competence matters more for role-occupancy than correct procedures do. Indeed, it is interesting to identify the domains that prioritize competence and those that prioritize correct procedures. It is notable that, for some of our most morally important roles like parenting, correct procedures are secondary. Admittedly, Stella's rights as a parent are more morally fragile and contingent than ordinary parents' rights because ordinary parents' rights do not depend on their child's wishes or her *best* interests (it's enough that the parents' efforts be adequate). Nevertheless, Stella has

¹⁸ One problem with the voluntarist argument (i.e. that a child has a right to stay with the parent she chooses) is that it ignores adaptive preferences, trauma, and vulnerability. Despite those worries, Amy Mullin observes that: 'The idea that, in child-custody cases, the preferences of a child should be given consideration, and not just the "best interest" of the child, is beginning to gain acceptance in the U.S., Canada and Europe. "Gregory K," who at age 12 was able to speak rationally and persuasively to support his petition for new adoptive parents, made a good case for recognizing childhood agency in a family court. Less dramatically, in divorce proceedings, older children are routinely consulted for their views about proposed arrangements for their custody.' Mullin (2014).

¹⁹ In this discussion, I bracket questions about structural injustice which could lead us to say that ordinary judges, police officers, legislators, and executives are illegitimate occupants of their offices in virtue of an unfair distribution of positions of authority within society. I thank Fay Niker for this observation.

²⁰ Similarly, in quasi-emergencies where institutional structures are weak, such as in the 18th – 19th c. Western frontier, people can gain legitimate role-occupancy when no other people with better credentials are available to perform the requisite functions. For instance, when few preachers could be found to conduct marriages, funerals, and other services, mayors, ship captains, and military leaders became legitimate officiants of these services.

competency-related rights despite the procedure through which she became a parent. Her rights are akin to those of a journalist who gains credentials in an unorthodox way. She can lose her credentials if she doesn't do her job well; her rights turn on her competence and unique value in the role, and not on the proper procedure for coming to hold it.

Professions such as journalism are structured to privilege expertise over credentials. Someone without journalistic training could go into the field, get scoops that other journalists miss, become indispensable to a newsroom, and grow to have the legitimacy, and get the credentials, of professional standing. (In doing this, she would become an ordinary piggybacker, as society came to have interests in her having the protections of the formal position.) Other professions such as academia can also privilege expertise over correct procedures. As the film *Good Will Hunting* shows, a talented mathematician with no formal training can get an elite institution's support when society has more interest in him being educated than in him jumping through the hoops to become a student.

By contrast, in other professions, a person cannot grow into legitimate role-occupancy by squatting in it for a long time. If we have a functioning criminal justice system, then squatting behind a judge's bench will not give someone rights to that office, even if she dispenses justice beautifully. If we have a functioning republic, then hijacking the presidency will not give someone the title to that office, even if he executes its functions competently. If we have a secure legal system, then engaging in vigilante law enforcement will not entitle someone to the formal standing of a police officer, even if she does it well.

Many of Cases 1-17 necessarily privilege skill and uniqueness over correct procedures. In *Forced Marriage*, for instance, Aneeta and Mak are more like unlicensed doctors working in an emergency than like would-be judges. Their situation is akin to a crisis. Despite the illegitimacy of the forced marriage procedure, they get some rights to act, grounded partly in their spouse's and kids' interests and partly in their own interests.

In *Beauty and the Beast*, as noted above, Beast is more like a would-be judge than an unlicensed doctor in an emergency. He should not enjoy the position he has as Beauty's companion even though he becomes a good companion. But, unlike the would-be judge who, in a functioning legal system, does not gain legitimacy over time, Beast does gain legitimacy over time precisely because he has taken away Beauty's functioning social system and replaced with his own company. Thereby, he sets up the conditions for her other joint narratives to end and his and her lives to intertwine in ways that radically change Beauty's interests. This seems to be doubly problematic: Beast is both holding a role he shouldn't hold and engineering conditions to make his role legitimate. But, this result is difficult to resist if we privilege Beauty's interests.

The same is true for Jenny and Stella in *Caring Kidnapping*. Stella should not enjoy the position she has as Jenny's parent even though she is a caring parent. But, the longer Jenny stays with her, the more their lives intertwine and the less Jenny is intertwined with her original family. Jenny's interests change radically, thereby setting up the conditions for Stella to become her legitimate caregiver. Again, this seems doubly problematic, but is difficult to resist if we privilege Jenny's interests.

This reality about our relationship-interests is morally tragic. The original parents of Jenny now must compete with Stella for the right to raise her. And, if we prioritize Jenny's psychological and emotional interests, then, in time, Stella will have the stronger claim.

This reality about our relationship-interests not only is tragic, but also has a sting in its tail, because it can be exploited. During custody battles, the parent who has a child in her care has reason to stall proceedings because the longer the child remains in her care, settled in school, and doing well, the stronger her claim is that the child's best interests are served by preserving the status quo. This strategy not only changes our views about the child's best interests. It *actually changes* the child's best interests.

In addition to being exploitable, this reality seems to invite a bad moral precedent. Seemingly, all a person needs to do to get relationship rights is succeed in acting wrongly in a way that alters and then serves another person's interests. Seemingly, all a person needs to do to get parental rights that are potentially stronger than the original parents' rights is kidnap a child and raise her well for long enough that the child comes to have legitimate interests in continuing the relationship. Seemingly, all a person needs to do to get companion rights is kidnap someone and treat her well enough that she then has interests in staying with him.

This worry about bad precedents is particularly acute for women's reproductive rights. History and literature overflow with examples of men violating women, both within marriage and outside marriage, precisely to gain the parental rights that can arise from rape. In *The Forsyte Saga*, Soames desperately wants a son. He rapes his wife Irene to try to get one. In the film *The Duchess*, the Duke of Devonshire is desperate for an heir. He rapes his wife in the hope of getting one. Most legal jurisdictions have historically granted men a legal right to sexual relations with their wife. Many jurisdictions still allow marital rape.

This worry about bad precedents is problematic more generally. Rights are supposed to end the argument and tell us what to do. But, some of the wrong-generated rights I have identified are highly unpalatable. Ideally, we want to avoid a moral framework for the general regulation of our behavior that entails these kinds of rights. Acknowledging these rights seems to leave us without good action guidance.

In reply, first, morality is complex, tragic, pluralistic, and demanding. Many a correct moral conclusion is simply the least bad option of a bad bunch.

Second, we can neutralize part of the sting of some wrong-generated rights by rejecting exclusivity. We need not assume that Beast's rights, Stella's rights, or even Jess's rights to the bicycle are *exclusive*. Someone can have a right to be a parent, or a companion, or an owner without having an *exclusive* right to be that thing.²¹ While helpful, non-exclusivity removes only part of the sting since these rights remain unpalatable regardless of whether they are exclusive.

Third, although we cannot entirely avoid the undesirable result that people can gain new rights when they successfully do serious wrongs which alter others' core interests, nevertheless we can highlight that the rights they gain are part of the *ex post* analysis which we undertake only after the moral ballgame has changed. We can insist that *ex ante* people have no right to do wrongs that can generate these benefits. People have no right to reshape others' interests in these ways. We should intervene if people attempt such wrongs. And, failing that, we should intervene as quickly as possible after they do such wrongs to prevent victims' interests, or others' interests, from changing too much. Moreover, we should insist that, even once victims' or others' interests have changed, wrongdoers have duties to compensate, apologize, repair, and restore as well as possible when that is consistent with respecting those changed interests.

All that said, we might still hanker for strategies to resist the above analysis of wrong-generated rights. One potential strategy appeals to the defeasibility of rights. A second appeals to the conditionality of rights. Let's take each in turn.

4. Possible Solutions?

4.1 Defeasibility

Rights have special normative force. They are often described as conversation-stoppers, argument-thresholds, and trumps. They are special, weighty reasons that tend to override competing considerations to pursue other social goals. They are a check on straightforward consequentialist reasoning. In virtue of these special properties, rights secure

²¹ I thank Clare Chambers for this point.

for us a basic level of equal treatment, protection, and freedom. Such equal protections are only genuine if rights cannot be easily defeated. As Peter Jones puts it:

If rights can be removed or overridden when they come up against competing considerations, that may seem to imperil their very character as rights...[For example,] what sort of guarantees would we possess if the right to a fair trial or the right not to be tortured were not absolute [i.e. infeasible]? (Jones 1994, 190)

But, of course, despite their normative force, rights are not absolute. They are sometimes defeasible. First, some rights are more important than other rights. When more important rights conflict with less important rights, the more important rights should usually defeat the less important rights. Second, sometimes, a projected bad outcome is so horrific that the argumentative threshold posed by the rights at stake is surmounted, at least when those rights are less important (Dworkin 1984, 153-67). In slightly stronger terms, Jones states that 'For virtually every right that one might assert it is possible to think of circumstances in which there is a plausible case for setting that right aside.' (Jones 1994, 192)

The defeasibility of rights offers a possible strategy to resist the full implications of morally complex wrong-generated rights. This strategy says that at least the most problematic wrong-generated rights are invariably defeated by competing considerations. To test this possibility, let's return to *Caring Kidnapping*. Jenny's right to remain in this caring parent-child relationship is defeasible (by hypothesis). So too then is Stella's right, which derives from Jenny's interests and rights. If Jenny's right is actually defeated by her original family's prior claim, then so too is Stella's derivative, duty-based right to raise her.

Which factors are salient to determining whose rights prevail in this case? Would it matter if Jenny's original family includes brothers and sisters whom she doesn't know and who don't know her, as well as a mother, a father, and some grandparents? These people all have legitimate rights-claims. Do their claims collectively defeat hers (and with hers, Stella's)? Would it matter that, whereas the members of this larger family all have each other, Stella has no other family? Do Jenny's expectations and wishes defeat the claims of whichever parents she does not want to raise her? Do her best interests and no one else's trump all other considerations? These questions illustrate the complexity of the project of untangling the competing claims to determine which rights should triumph.

The problem with the defeasibility strategy is that a right is not much of a right if it is *always* defeated by competing considerations. And, to avoid wrong-generated rights like Stella's we would have to say that all rights like Jenny's from which Stella's rights could derive, are always defeated by competing considerations. If intersubjective rights like Jenny's are so easily defeated that they fall to any counter-pressure, then they are not much of an argumentative threshold. They do not trump anything. They have no special normative force. They're not really rights.²²

One way forward might be to unpack *defeasibility* in terms of a proportionality test: Is the interference with a given undisputed right proportionate and, hence, justified (i.e. an infringement)? Such a proportionality test would have at least four conditions. First, the interference with the right must have a legitimate aim. Second, a rational connection must exist between that aim and the interference. Third, no less restrictive means will suffice to achieve the legitimate aim. In other words, the interference is necessary. Fourth, the legitimate aim must be weightier than the right at stake.²³ This approach would give us a set

²² In contrast with my line of thought here, Benedict Rumbold argues that a right may still be considered a right even when it fails to present decisive reasons for action against competing considerations. See Rumbold (2018).

²³ Alasdair Cochrane summarised the proportionality test along these lines in a lecture at All Souls College, Oxford (2016).

of tools to combat some of the questions that the above cases raise. However, this approach is unlikely to fend off all complex wrong-generated rights, since those rights, and the rights and duties that can produce them, will sometimes pass this proportionality test.

4.2 Conditionality

Whereas defeasibility and absoluteness pertain to the moral *weight* of rights, conditionality pertains to their *nature*. Most, if not all, rights are conditional in some respect. Consider, for example, contractual rights. If you hire me to paint your house for £500, my right to the £500 is conditional on my painting your house. Similarly, a medical professional's moral right to treat people suffering in a war-torn area is conditional at least on her having the requisite medical expertise. But are rights conditional on anything else, like not coming about through *egregious* wrongdoing?

Addressing this question returns us to the premise noted at the beginning of Section 3: the fact that these rights arise from wrongdoing is not a reason to reject these rights. A critic of the above analysis might ask why (serious) wrongdoing does not block the generation of rights, at least for the wrongdoer.

In reply, first, it is true that egregious wrongdoing can be a deal-breaker for many rights. But, it is not a deal-breaker for *all* rights. Some of our rights are secure, which means that we have these rights regardless of whether we (or others) meet certain standards of good behavior and good standing. We cannot forfeit these secure rights through bad behavior. James Nickel holds that, at the most basic level, we have four secure claims:

- 1) a secure claim to have a life;
- 2) a secure claim to lead a life;
- 3) a secure claim from excessively unfair treatment; and
- 4) a secure claim from degradation and cruelty (Nickel 2006, 62ff; and Nickel 2005 385–402, 391ff).

If we flesh out the details of these secure claims, we will find that they cover many of the morally complex cases that generate rights, including intimate relations of interdependency, emergencies, and core-service provision. Consequently, conditionality does not enable us to avoid the conclusion that morally complex wrongs can generate rights in troubling cases.

Second, when egregious wrongdoing is a deal-breaker, what that means is that we *forfeit* our rights. That is quite a different matter from saying that, in light of our wrongdoing, we do *not get the rights in the first place*. A reader who is skeptical of the above analysis must explain why, when we act wrongly in potentially game-changing ways, we do not even get the rights in the first place that would ensue from our wrongdoing. I noted in Section 3 that there is nothing in the interest theory as such that says wrong-generated interests cannot be sufficiently strong to ground duties in others.

If the defeasibility strategy and conditionality strategy offer the best prospects to avoid the analysis of this paper, then we must conclude that, sometimes, doing serious wrong gives us significant new rights despite the morally tainted pedigree of the interests that produce these rights. In a nutshell, we shouldn't assume that the interests which underpin rights are necessarily morally clean. As this paper shows, often they are not.²⁴

²⁴ For helpful written comments, I thank Helen Brown Coverdale, Clare Chambers, Luís Duarte d'Almeida, Simon Gansinger, Simon Palmer, Alice Pinheiro Walla, Patrick Tomlin, Leif Wenar, and an anonymous referee. I also thank the editors, David Sobel, Peter Vallentyne, and Steven Wall, for valuable suggestions to improve the paper. For helpful discussions, I thank the participants of the University of Edinburgh Foundations of Normativity Conference, June 2016; the Nuffield College Political Theory Workshop, Oxford, February 2018; the Institute of Philosophy's Practical, Political, and Ethical Seminar, London, May 2018, the Oxford Studies in

References

Brownlee, Kimberley (2012), *Conscience and Conviction: The Case for Civil Disobedience*. Oxford: Oxford University Press.

CBS News (2017), 'Judge Rescinds Order Granting Rapist Joint Legal Custody of Victim's Child', CBS News, 17 October 2017: <https://www.cbsnews.com/news/judge-rescinds-order-granting-rapist-joint-legal-custody-of-victims-child/>

Cowan, Jill (2015), 'Dickson County Couple Drops Sonya Custody Battle', *The Tennessean*, 25 August 2015: <https://www.tennessean.com/story/news/local/dickson/2015/08/24/dickson-county-couple-drops-sonya-custody-battle/32290381/>.

Cruft, Rowan (2013), 'Why is it Disrespectful to Violate Rights?' in *Proceedings of the Aristotelian Society* 113: 2 pt2, 201–224.

Cruft, Rowan (2006), 'What Aren't Duties Rights?' in *The Philosophical Quarterly*, 56: 223, 175-192.

Dworkin, Ronald (1984), 'Rights as Trumps,' *Theories of Rights*, ed. Jeremy Waldron. Oxford: Oxford University Press.

Jones, Peter (1994), *Rights*. Palgrave.

Kamm, Frances (2002), 'Rights,' *Oxford Handbook of Jurisprudence and Philosophy of Law*. Jules L. Coleman, Kenneth Einar Himma, and Scott J. Shapiro (eds.), Oxford: Oxford University Press.

Mullin, Amy (2014), 'Philosophy of Childhood', in *The Stanford Encyclopedia of Philosophy*, Ed Zalta (ed.): <https://plato.stanford.edu/entries/childhood/>.

Nickel, James (2006), *Making Sense of Human Rights*, 2nd edition. Oxford: Blackwell.

Nickel, James (2005), 'Poverty and Human Rights', *The Philosophical Quarterly*, 55 (2005), 385–402.

Sreenivasan, Gopal (2005), 'A Hybrid Theory of Claim Rights' in *Oxford Journal of Legal Studies*, 25: 2, 257-274.

Stilz, Anna (2017), 'Settlement, Expulsion, and Return', *Politics, Philosophy & Economics*, 16:4, 351–374.

Raz, Joseph (1986), *The Morality of Freedom*. Oxford: Oxford University Press.

Political Philosophy Conference, Pavia, June 2018, and the Cambridge Moral Sciences Club, 6 November 2018. For helpful feedback on related work, I thank the participants of the *Being Sure of Each Other* manuscript workshop at the University of Warwick, September 2016.

- Raz, Joseph (1994), *Ethics in the Public Domain*. Oxford: Oxford University Press.
- Rumbold, Benedict (2018), 'Towards a More Particularist View of Rights' Stringency' in *Res Publica*, doi: 10.1007/s11158-018-9396-3.
- van der Zee, Renate (2018), "'It put an end to my childhood": the hidden scandal of US child marriage', *The Guardian*, 6 Feb 2018:
<https://www.theguardian.com/inequality/2018/feb/06/it-put-an-end-to-my-childhood-the-hidden-scandal-of-us-child-marriage>.
- Waldron, Jeremy (1981), 'A Right to Do Wrong', *Ethics*, 92: 1, Special Issue on Rights, 21-39; and Raz, Joseph (2009 [1979]), *The Authority of Law*. Oxford: Oxford University Press, chs. 14-15.
- Walker, Margaret (2006), *Moral Repair*. Cambridge University Press.
- Wenar, Leif (2013), 'The Nature of Claim-Rights', *Ethics*, Symposium on Rights and the Direction of Duties, 123: 2, 202-229.
- Wenar, Leif (2005), 'The Nature of Rights', *Philosophy & Public Affairs* 33, 3, 242.