

RIGHTS AND VIRTUES

THE GROUNDWORK OF A VIRTUE-BASED THEORY OF RIGHTS

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ABSTRACT

The dissertation investigates whether virtue ethics can provide the normative ground for the justification of rights. Most justificatory accounts of rights consist in different explanations of the *function(s)* of rights. On the view I will defend, rights have a plurality of functions and one of the main functions of rights is to make the right-holder more virtuous. The idea that the possession of rights leads to the development of virtues, called *the function of virtue acquisition*, is the core of a virtue-based justification of rights elaborated in this dissertation. Based on Leif Wenar's Kind-Desire Theory of rights and Nancy E. Snow's Minimal Virtue of the Folk, I argue that there are two general types of rights, enabling rights and protective rights, and that both types are essential to the development of virtues. Enabling rights have the function of virtue acquisition because they allow the right-holder to strive for approximation of ideal role models while performing duties and other tasks. Such models are called *heuristic models of virtues* for they define what virtues are and how these virtues should be expressed in action. Some protective rights, namely promissory rights and the power-right to promise, behave like enabling rights when it comes to their ability to develop virtues. Other protective rights, especially children's rights, make right-holders more virtuous *via* protecting their essential needs. The dissertation succeeds in elaborating the virtue-based justification of many rights, hence it suggests that people hold and should have rights because rights make them better people.

To
my wife Irena Micková
and
my daughter Olivia Carla Micková

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AUTHOR'S DECLARATION

I declare that, except where explicit reference is made to the contribution of others, that this thesis is the result of my own work and has not been submitted for any other degree at the University of Glasgow or any other institutions.

Signed:

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INTRODUCTION

The aim of this dissertation is to investigate whether virtue ethics can serve as the normative ground for the justification of rights. Most justificatory accounts of rights consist in different explanations of the *function(s)* of rights. On the view I will defend, rights have a plurality of functions and one of the main functions of rights is to make the right-holder more virtuous. The idea that the possession of rights leads to the development of virtues, which I will call *the function of virtue acquisition*, is the core of a virtue-based justification of rights elaborated here, and therefore central to the dissertation.

The origins of our modern understanding of rights can be traced back to the Middle Ages (Brett 1997), though the intense conceptual re-shaping of this understanding started with the works of Grotius, Hobbes and Locke in the sixteenth and seventeenth centuries, who considered rights as powers and immunities assigned to individuals by nature and/or the state (Finnis 1980, Schneewind 1998). Such a conceptual framework was once again re-developed by Jeremy Bentham (1789/1996) and Immanuel Kant (1797/1996) in the eighteenth century and later by Wesley Newcomb Hohfeld (1913), from whom most, if not all, contemporary scholars learn to comprehend what rights are (Hart 1983, Wenar 2008).

Perhaps because of this history of the modern concept of a right, all the ongoing philosophical discussions about rights line up with deontology and consequentialism, two normative theories that dominated modern moral philosophy. More precisely, the modern idea of rights seems to have been crucially influenced by a Kantian moral philosophy (the best-known instance of deontology) and the first utilitarians (proponents of an instance of consequentialism), such as Jeremy Bentham and J. S. Mill. Their influence is still clearly visible today, though most contemporary theorists ground rights in deontology rather than consequentialism.

In the second half of the twentieth century, Elisabeth Anscombe (1958) famously challenged the both predominant normative theories and proposed a return to Aristotle's virtue ethics. To the best of my knowledge, no modern scholar

has attempted to justify rights from a virtue ethicist's standpoint.¹ The reason why theorists have overlooked virtue ethics whilst searching for the justification of rights might be found in the distinctiveness of this rather ancient normative theory. While both deontology and consequentialism are characterised as theories dealing with 'act-centred' morality that answers the question 'What is the right thing to do?', virtue ethics is usually explained as an 'agent-centred' theory of moral character, aiming to answer questions such as 'What sort of person should I be?' and 'How should I live?' (Crisp 1996, Schneewind 1990). Accordingly, it may seem quite natural to conclude that virtue ethics does not have much to say about rights because both the language of rights and the function(s) of rights are thought to be concerned with guiding human action and/or providing people with a restricted scope for their actions, that is, with liberty or freedom.² Therefore, rights may seem to go hand in hand with act-centred normative theories that concern the question of rightness and wrongness of action, rather than agent-based theories of goodness and badness of moral character. This dissertation disproves that assertion. As will be argued, many characteristic features of virtue ethics are not only compatible with the modern concept of a right, but also

¹ Some scholars have recently started to search for possible connections between virtues and other legal concepts. Edmundson (2006) focuses on virtuous political and legal obedience. Gardner (2000), on the other hand, investigates whether the virtue of justice is the right aspiration for the law. Cimino (2010), furthermore, grounds the fundamental principles of the contract law in virtue ethics but does not pay any attention to the question of what virtues can tell us about contractual rights. Brownlee (2015), finally, illustrates that the law can function as a model of virtue and that citizens can develop virtues by emulating this model. I have drawn inspiration from Brownlee's work. However, she is sceptical about connecting virtues and rights. Rights, as she points out, can only lead to 'respecting people's rights and demanding that they fulfil their duties instead of adopting the more sensitive, flexible approaches recommended by virtue ethics' (Brownlee 2015: 13). Furthermore, she argues that we can reasonably expect only some 'moral minimum' when it comes to respecting other people's rights and demanding their performances of duties. Hence, the law cannot enforce some higher moral standards of respecting and performing. As will be argued in this dissertation, the law does not need to enforce such higher standards so that rights can lead to the development of virtues. For these higher standards come with people's motivations to exercise rights in certain ways in order to perfect their social roles.

² Liberty and freedom are used interchangeably in the dissertation.

reveal some unexplored aspects of rights, such as their ability to make us better people in general.

The dissertation is divided into two parts. Part One demonstrates that the modern concept of a right is compatible with the idea of virtue acquisition, and that many rights which are derived from social roles we occupy in our everyday life are necessary for the development of virtues. In Part Two, I elaborate the virtue-based justification of children's rights and promissory rights, that is, rights which are the paradigmatic counterexamples to the two prevailing theories of rights, the Will Theory and the Interest Theory.

To be more specific, Chapter I. introduces a theoretical background of current philosophical discussions about the nature and justification of rights. Based on Leif Wenar's (2005, 2013) work, I argue that rights have more than only one function (Wenar's Several-Functions Theory) and that rights are ascribed to social roles and natural kinds (species) rather than individuals (Wenar's Kind-Desire Theory). I use Wenar's Kind-Desire Theory as the descriptive account of rights throughout this dissertation.

Chapter II. concerns virtues. There are two main interpretations of virtues. According to one explanation, virtues are acquired character traits and qualities, partly constituted by virtuous motives and expressed in action. The other account takes virtues to be any qualities that reliably lead to good ends or consequences. I propose the working definition of virtues that combines the core principles (virtuous motives and reliability) of those two main accounts. Since I aim to illustrate that the possession of rights results in the development of virtues, the question about how such virtues are acquired is essential to my argument. Consequently, I present Nancy E. Snow's (2016) explanation of virtue acquisition, the Minimal Virtue of the Folk, according to which people can and often do develop virtues through perfecting their social roles.

Chapter III. connects the concept of a right with the idea of virtue development *via* the realm of social roles, as well as demonstrates that at least some role-based rights, namely *enabling rights*, have the function of virtue acquisition. In principle, role-based enabling rights permit the development of

virtues through perfecting social roles since they allow their holders to strive for approximating ideal role models whilst performing role-based duties, activities and ends. Such ideal role models, *the heuristic models of virtues*, define what virtues are and how they should be expressed in action

Chapter IV. illustrates how virtue ethics justifies the rights of children. Children, I believe, have at least three fundamental rights, the right not to be harmed, neglected and abused, the right to be nurtured, cared for and loved, and the right to education. Unlike enabling rights, these rights exist primarily to protect children's essential needs. I argue that by protecting such needs, the three fundamental rights secure children's healthy mental and physical development, which, in turn, protects and furthers children's capacity for virtue acquisition. Despite the fact that everyone holds this capacity, its scope depends, to a large degree, on one's mental and physical health. Furthermore, although the capacity for virtue acquisition develops throughout our lives, I believe that the most crucial stages of this development occur in childhood. Therefore, the protection of children's essential needs makes children more virtuous throughout their lives.

Chapter V., the last chapter of this dissertation, inquires into the practice of promising to illustrate that the power-right to promise (i.e., our ability to make promises) and promissory rights have the function of virtue acquisition. I argue that anyone who participates in promising has a moral duty to achieve at least the minimal standards of honesty and fairness, for the duty comes with the roles of a promisor and a promisee. This duty-ascription permits the perfection of the two roles, which then allows the development of honesty and fairness. To perfect the roles of a promisor and a promisee, individuals must exercise their power-right to promise and promissory rights in certain (*correct*) ways. Thus, these rights make the development of honesty and fairness possible. Put differently, the function of virtue acquisition here is explained by the Minimal Virtue of the Folk and the heuristic model of virtues. The chapter demonstrates that many people are motivated (either indirectly or directly) to perfect their roles of a promisor and a promisee, implying that many people will eventually acquire certain standards of honesty and fairness.

Finally, it is also important to highlight the limits of my work. First and foremost, albeit I am inclined to think that the function of virtue acquisition can be found in all types of rights, I concentrate only on the so-called ‘claim-rights’ and one ‘power-right’. Other types of rights, such as privilege-rights, immunity-rights and other power-rights, are passed over, partly because of availability of space, and partly since claim-rights are the paradigm rights of human conduct, making up many essential rights people hold. Second, I have no intention to depict virtue ethics as a *better* normative theory for the justification of rights when compared with deontology and consequentialism. The aim of this dissertation is to investigate whether virtue ethics *can* justify rights, not whether this justification is better than others. Third, my work neither explains nor vindicates any meta-ethical position. Given that the dissertation is concerned with the *normative* aspects of rights, I leave open the meta-ethical implications of the virtue-based justification of rights.

1. Philosophical discussions about rights

Most modern scholars researching into rights have both analysed logical links between rights and other legal concepts, such as ‘powers’, ‘immunities’, ‘claims’, and ‘duties’, and attempted to explain their normative and perhaps meta-ethical foundations (Waldron 1984). As will be illustrated in this chapter, most explications of *what rights are* (i.e., *descriptive* accounts of rights) have been derived from distinct explanations of *what rights there are* (i.e., *justificatory* accounts of rights). Such justificatory accounts can be regarded as different explanations of the function(s) of rights. The chapter aims to demonstrate that rights have more than one function, and that they are ascribed to social roles and natural kinds (such as human beings and animals) rather than individuals.

For any contemporary theorist who is concerned with a descriptive account (conceptual analysis) of rights, Wesley Newcomb Hohfeld (1879-1918) is in many ways like Gottlob Frege (1848-1925) for those who inquire into the philosophy of language. Both Hohfeld and Frege came up with ideas that are currently considered as the fundamental starting point for anyone who is interested in the nature of rights and the nature of language, respectively.³ In his article, ‘Some Fundamental Legal Conceptions as Applied in Judicial Reasoning’ (1913), Hohfeld investigated and clarified ‘fundamental legal relations’ consisting of ‘jural opposites’ and ‘jural correlatives’ of eight fundamental legal concepts: *rights*, *duties*, *privileges*, *no-rights*, *powers*, *liabilities*, *immunities* and *disabilities*. In other words, Hohfeld devised the descriptive framework of complex internal structures of these legal concepts, and therefore he is rightly considered to be the father of a modern conceptual analysis of rights.

Although Hohfeld’s analysis is, as Leif Wenar points out, ‘by far the most widely accepted analysis of the logical structure of rights’ (Wenar 2008: 253),

³ Compare books that aim to introduce the philosophy of language, such as, (Miller 2007), (Kemp 2013) and (McGinn 2015), with those that provide the introduction to theories of rights, for instance, (Waldron 1984), (Thomson 1990) and (Wenar 2015).

there is a vocal disagreement about the ‘strict’ definition of what rights are. Some theorists insist on Hohfeld’s (1913: 32) assertion that the world ‘claim’ is the best synonym for the notion ‘right’, and therefore, in the ‘strictest sense’, *all* rights are claims (see, e.g., Feinberg 1970, Kramer 1998). Others argue that *all* rights are paired-privileges and powers providing their holders with choices or discretion (see, e.g., Hart 1983, Steiner 1998).⁴ However, the assertions that rights are either claims or paired-privileges and powers seem implausible, for we have other types of rights too.⁵ Suppose that you have been invited to deliver a lecture at Charles University in Prague. By accepting the invitation, you obtain the right to deliver the lecture. Yet, this right is neither a paired-privilege right nor a power-right nor a claim-right. The right you have is a single-privilege right, meaning that you have no duty not to deliver the lecture, but, at the same time, you are held under the duty to deliver it.

Given the implausibility of the statements that rights are either claims or paired-privileges and powers, others (Wenar 2005, 2008, 2015) have argued that rights are, in fact, one or a mixture of four essential Hohfeldian elements, *privileges, claims, powers, and immunities*, defined as follows:

- **Privilege-rights:** *X has a privilege-right to ϕ if and only if X has no duty not to ϕ .*
- **Claim-rights:** *X has a claim-right that Y ϕ if and only if Y has a duty to X that ϕ .*
- **Power-rights:** *X has a power-right if and only if X has an ability to alter some other Hohfeldian element.*

⁴ To have a paired-privilege means to have both *no duty not to ϕ* and *no duty to ϕ* . (Unless otherwise stated, ϕ stands for some action or refraining from some action). To have a single-privilege, on the other hand, means to have only *no duty not to ϕ* . According to Wenar, the main difference between paired-privilege and single privilege rights is in their functions. While the function of single-privilege rights is to confer an exemption from a general duty (e.g., a duty not to kill), the function of paired-privilege rights is not necessarily to confer such an exemption, but to provide the right-holder with discretion concerning ϕ (Wenar 2005: 227-228).

⁵ It is true that claim-rights, paired-privilege rights and power-rights make up many important moral and legal rights, such as citizens’ right not to be assaulted and children’s right to education (claim-rights), rights of free speech and freedom of religion (paired-privilege rights), and rights to give consent and make promises (power-rights).

- **Immunity-rights:** *X has an immunity-right if and only if Y lacks an ability to alter X's Hohfeldian element.*

These rights are then divided into 'first-order' rights (privilege-rights and claim-rights) and 'second-order' rights (power-rights and immunity-rights). First-order rights concern directly people's conduct, for they permit, require and forbid action. While a firing squad, to use Wenar's (2005) examples, has a privilege-right to kill, which exempts the firing squad from the general duty not to kill (permitting action), a promisee has a claim-right that the promisor fulfils the promissory duty (requiring action, namely the performance of the promised action, and forbidding actions conflicting with the promised action). On the other hand, second-order rights are concerned directly with the first-order rights, since they introduce, change and cancel privilege-rights and claim-rights. To give you consent to enter my house, which is the power-right derived from my ownership of that building, is to waive my claim-right that you do not enter the house. This ownership also provides me with the immunity-right that others cannot waive, annul or transfer my aforementioned power-right and claim-right.

In fact, property rights are an excellent instance of the so-called 'molecular rights', that is, rights consisting of more than only one Hohfeldian element, because they include all four essential elements. As has been said, my ownership of the house contains the power-right enabling me to waive the claim-right, also derived from this ownership, that others do not enter the house. Since I can transfer the whole molecular right to someone else by selling the house, the second-order rights are able to change and cancel themselves as well. Furthermore, my property right includes the privilege-right allowing me to enter and live in the house. Finally, my ownership comes with the immunity-right which disables other people to alter any aspect of my property right, that is, my privilege-right, claim-right and power-right.⁶ Another example of a molecular right is the right to religious freedom. This right is both an immunity-right, for it

⁶ Note that someone might have a power-right to waive, annul or transfer other people's second-order rights. Accordingly, when I keep failing to pay my debts, the court of law may issue a writ of *fieri facias* which authorises someone else, an execution creditor, to take my property and thereby annul my molecular property right.

protects my ability to choose whether and which religion to practise, and a paired-privilege right, because it provides me with this capacity to choose. Given that most modern rights have such complex (molecular) structures, Wenar (2005, 2015) seems to be correct in claiming that rights are either one or a mixture of the four Hohfeldian elements, and not merely claims or paired-privileges and powers.

When it comes to the normative debate about rights (different justificatory accounts of rights), the main disagreement is, in principle, about the function(s) of rights. Most philosophers participating in this debate have attempted to explain *what rights there are* (i.e., rights-ascriptions) by identifying *what rights do for* the right-holder, as well as to justify *the existence of rights as such* by explicating *why people need rights at all*. For the sake of clarity, let me divide the debate into two sub-discussions, though, as will be illustrated later, the dividing line between the two is often blurred.

The first sub-discussion can be regarded as a micro perspective on the function of rights, because it concerns the question about what rights do for their individual holders. The Will Theory and the Interest Theory are the most prominent accounts here. While the proponents of the Will Theory (e.g., Hart, 1955, 1983, Steiner 1998) argue that rights provide the right-holder with choices or deliberation seen as liberty, the advocates of the Interest Theory (e.g., Bentham 1789/1996, Lyons 1970, 1984, MacCormick 1982, Raz 1988, Kramer 1998) maintain that rights protect and further the right-holder's interests understood as well-being or welfare. A promissory right is the typical exemplar of a right for the Will Theory, because it provides the promisee with an option to either waive or enforce the performance of the promised action. Property rights, on the other hand, are the representative instance of a right for the Interest Theory, since they protect and further the owner's interests in ownership. Note that not all interests someone might have can serve as 'sufficient reasons' for holding another person to be under a duty. Only those interests that are essential to one's well-being or welfare (e.g., ownership) provide such normative grounds (MacCormick 1982, Raz 1988).

The second sub-discussion can be seen as a macro perspective on the function of rights, for its central question is why people need rights at all. Any

answer to this question is meant to justify the existence of rights in the society. There are, roughly speaking, two main approaches to the subject matter, called ‘Duty-Based’ or ‘Status’ theories and ‘Goal-Based’ or ‘Instrument’ theories (Dworkin 1978, Wenar 2015).

Duty-Based (Status) theories work on the assumption that rights are entirely based on or derived from people’s status. Though the concept of status might be understood in different ways, the most common way is to interpret it as human dignity. Since human dignity is both unwaivable and unalienated, nobody can ever be justified in violating another person’s rights. According to Nozick (1978), perhaps the best-known defender of this justificatory account, rights are ‘side constraints’ on the pursuit of good consequences. Grounded in a deontological comprehension of human dignity, such side constraints exist to protect individuals against the so-called ‘utilitarianism of rights’, the claim that there might be circumstances, such as avoiding some terrifying harm, in which people are justified in infringing individuals’ rights (Nozick 1978).

Goal-Based (Instrument) theories, on the other hand, take rights to be instruments for achieving some optimal distribution (maximisation, equality, etc.) of advantages (utility, capabilities, resources, etc.) (Wenar 2015). The advocates of this approach argue that there might be situations in which the infringement of someone’s rights is the *only* right (hence justified) action. Thomson (1990), for instance, comes up with the idea of threshold rights, according to which one is justified in overriding some other right if and only if the actual infringement brings about some significant amount of good. Goal-Based theories are often, though not necessarily, grounded in consequentialism. Accordingly, maximising good consequences, such as killing one innocent to save the lives of five, is one of the most widely accepted ways to determine when it is right to override someone else’s rights (e.g., the rights of the innocent person).

The dividing line between those two sub-discussions is usually blurred because most philosophers often intermingle their micro-perspective accounts with their macro-perspective explanations of the function(s) of rights. This medley has two implications. Firstly, philosophers can have the same micro perspective while defending different macro-perspective accounts. For instance, first

utilitarians considered rights as instruments for maximising utility in the society (the Goal-Based Theory), and from this they inferred that rights benefit their holders (the Interest Theory) (Bentham 1789/1996). However, more recent Interest theorists (MacCormick 1982, Raz 1988, Kramer 1998) assert that rights protect and further people's well-being, and they seem to interpret the concept of well-being as the deontological notion of human dignity (the Duty-Based Theory). Secondly, philosophers can argue for the same macro perspective while holding different micro-perspective accounts. Some Will theorists (Hart 1955) argue that all rights are derived from an agent's status comprehended as autonomy (the Duty-Based Theory). Accordingly, such Will theorists share the same macro-perspective account with some Interest theorists but disagree about their micro-perspective views of the function of rights.

Furthermore, many philosophers often base their descriptive accounts of rights on their justificatory accounts. It is not a coincidence that the Will Theory and the Interest Theory have been also the two most prevailing descriptive accounts of rights. Most Will theorists maintain that only those Hohfeldian elements that give us the discretionary control (i.e., paired-privileges and powers) can be truly seen as rights. On the other hand, Interest theorists argue that rights are only those elements that protect and further our well-being or welfare (i.e., claims and perhaps immunities). Put differently, the proponents of the both theories explain what rights are in accordance with their views of what rights do for their holders (the micro perspective on the function of rights). This implies that whenever some Hohfeldian element fails to function in such ways, it is not (and should not be called) a right (see, e.g., Wenar 2008: 253-267).

Despite the differences between the Will and Interest Theories, they share the assumption that rights have only one (micro-perspective) function. In his work, Leif Wenar (2005, 2008, 2015) has challenged this assumption and argued that it is the main disadvantage of the Will Theory and the Interest Theory, for it leads to long-recognised counterexamples. These counterexamples reside in the theorist's inability to describe certain uncontroversial rights people hold. Will theorists, as will be illustrated in Chapter IV., cannot explain unwaivable rights (e.g., most children's rights and citizens' right not to be assaulted), because these rights do not provide the right-holder with an option to waive them. Interest

theorists, on the other hand, have had difficulties with describing, *inter alia*, the possession of rights that cannot be justified by individuals' interests. This inability precludes the Interest theorist from explaining most rights that come with social roles, such as journalists' right to protect their sources, police officers' rights to stop and search people, judges' right to sentence criminals, etc. As Wenar points out:

'Whatever interest a judge may have in exercising her legal right to sentence a convict to life in prison, the judge's interests cannot possibly justify ascribing to her the power to make such a dramatic change in the convict's normative situation.' (Wenar 2015)

Contrary to the assertion that rights have only one function, Wenar (2005) claims that rights have several functions, determining which Hohfeldian essential elements or which combinations of such elements are rights. In other words, Wenar, like other scholars, maintain that while all rights are Hohfeldian elements, only some Hohfeldian elements can be rights. To qualify as a right, these essential Hohfeldian elements (*privileges, claims, powers, and immunities*) must have at least one of the six following functions:

- *Exemption* (single privilege-rights)
- *Discretion* (paired-privilege rights and paired power-rights)
- *Authorization* (power-rights)
- *Protection* (immunity-rights and claim-rights)
- *Provision* (claim-rights)
- *Performance* (claim-rights and immunity rights)

This Several-Functions Theory seems to reflect, in a simple and elegant way, the complex molecular structure of most modern rights. Perhaps more importantly, Wenar's rejection of the 'monistic' view of the function of rights appears to avoid most, if not all, long-recognised counterexamples (see, e.g., Wenar 2005: 246-251). Consequently, I believe that Wenar's Several-Functions Theory provides a more accurate micro-perspective account than the Will Theory and the Interest Theory, and therefore I accept the conclusion that rights have a plurality of functions.

I have no intention to list all the possible functions of rights, nor do I plan to justify Wenar's six specific functions here. As mentioned in the introduction, the aim of this dissertation is to demonstrate that one of the main functions of

rights is to make the right-holder more virtuous (the function of virtue acquisition). Before elaborating the virtue-based justification of rights, I also need to explain the descriptive account of rights, the Kind-Desire Theory, which will be used throughout this dissertation.

The Kind-Desire Theory is Wenar's (2013) analysis of the nature of claim-rights. It serves as the descriptive account here for three reasons. First, this dissertation is concerned primarily with the virtue-based justification of claim-rights. (It should be pointed out that most claim-rights are in fact molecular rights, and therefore many rights discussed in the dissertation are also other types of rights.) Second, Wenar's analysis is normatively impartial. Put differently, it does not presuppose any justificatory account of rights, and it can be used to describe *any* system of norms classifying its entities:

‘The analysis carries no commitments regarding the justification of rights, or regarding the conceptual priority of duties or rights. The analysis says nothing about the force of rights: whether moral rights are “side-constrains” or whether legal rights are “trumps” are questions for moral and legal theory. Nor, most importantly, does the analysis say what duties or rights really exist. [The Kind-Desire] theory is an analysis of what rights *are*, not of what rights *there are*.’ (Wenar 2013: 209-210)

It follows that Wenar's description of rights is not grounded in deontology or consequentialism at all. This impartiality allows me to employ the characteristic features of virtue ethics whilst justifying specific rights-ascriptions.⁷ Third, the Kind-Desire Theory ascribes rights to social roles and natural kinds (e.g., humans and animals) rather than individual beings. As will be argued in the subsequent chapters, people can develop virtues through perfecting their social roles and humanity, and rights are essential to virtue acquisition for they permit this perfection. Wenar's Kind-Desire Theory, in other words, prepares the way for connecting the concept of rights with the idea of virtue acquisition.

⁷ I believe that the virtue-based justification would work with *any* non-normative descriptive account of rights. Since Wenar's analysis is, as far as I know, the *only* normatively impartial description of claim-rights available, I have no option but to use it as the descriptive account.

2. The Kind-Desire Theory of claim-rights

The Kind-Desire Theory, which is derived from Wenar's (2013) Social-Role Theory, ascribes claim-rights and duties directly to social roles and natural kinds (species). The analysis explains such ascriptions on the basis of the precise identification of role/kind-based *desires*:

'Consider a system of norms *S* that refers to entities under descriptions that are kinds [or roles], *D* and *R*. If and only if, in circumstances *C*, a norm of *S* supports statements of the form:

1. Some *D* (qua *D*) has a duty to *phi* some *R* (qua *R*); where "*phi*" is a verb phrase specifying an action, such as "pay benefits to," "refrain from touching," "shoot," and so on.
2. *Rs* (qua *Rs*) want such duties to be fulfilled; and
3. Enforcement of this duty is appropriate, *ceteris paribus*;

then: the *R* has a claim-right in *S* that the *D* fulfil this duty in circumstances *C*.' (Wenar 2013: 219)

Both the Kind-Desire Theory and the Social-Role Theory are formally and functionally identical. The only difference, as Wenar clarifies, lies in their scope. Since we do not consider human beings and animals as *roles*, the term 'role' is no longer sufficient for an analysis of rights. To include human and animal rights in his analysis, Wenar proposes a new term, a 'kind' (*genus* in Latin), which is broad enough to accommodate also humans and animals. Accordingly, parents, for instance, are members of both a *natural kind* (human being) and a *social kind* (parent). Although I adopt Wenar's 'natural kind' when referring to species, I am going to use the term 'social role' instead of his 'social kind'.

The Kind-Desire Theory is an analysis of claim-rights. As has been defined above, *someone, X, has a claim-right that someone else, Y, (not) φ if and only if Y has a duty to X (not) to φ*. Claim-rights, in other words, always correlate with duties (though some duties need not correlate with claim-rights). Any ascription of some right or duty, on Wenar's account, is based on the precise identification of role/kind-based desires. In principle, all social roles and natural kinds contain one of the two essential desires: (1) the desire to perform role/kind-based duties implying another desire to hold rights enabling this performance, and (2) the

desire that certain duties are fulfilled by others, which implies another desire to hold rights securing these fulfilments.

The first type of desire is pinpointed by the so-called ‘duty-derived attributions of desires’. Many social roles and presumably some natural kinds are, to a large extent, defined by duties they contain. To give an example, consider the role of a bartender. To be a bartender *means* to serve customers at the bar. Since this role is essentially defined by its duty to serve customers at the bar, the duty also identifies the role-based desire. Thus, any individual occupying the role of a bartender desires to serve customers at the bar. Note that Wenar’s concept of desire does not refer to individual persons’ psychological states, though people can identify with such desires. Accordingly, John, *qua* bartender, desires to serve customers at the bar, even though he, *qua* John (an individual person), does not wish to do so at all.

The identification of this type of desire also explains relevant rights-ascriptions. Parents, *qua* parents, desire to look after their children, for that is, arguably, their most important role-based duty. Since most rights held by parents exist to enable them to perform their parental duties and activities, the duty to care for children clarifies why parents desire to have such rights (e.g., rights to child benefits and to make decisions about raising children). Furthermore, given that many parental duties are enforced by the existing system of norms, those duties explicate why children have correlative claim-rights (e.g., the right that parents look after them).

Role/kind-normative attributions of desires identify the second type of desire. The difference between these and duty-derived attributions lies in a ‘duty loss’ (Wenar 2013). There are social roles and natural kinds which contain desires that certain duties are fulfilled by other people. Such desires simply come with roles and kinds as their norms. The role of a promisee, to use Wenar’s (2013) example, has the role-based desire that promisors fulfil their duties to keep promises. Unlike role-based desires in the roles of a bartender and a parent, the promisee’s desire is not pinpointed by some duty the promisee, *qua* promisee, must carry out. Since the concept of desire does not refer to our psychological states, our individual interests in the performance of the duty, and hence in

possessing promissory rights, are irrelevant here.⁸ Therefore, promissory rights are ascribed to the role of a promisee in accordance with *its* (role-based) desire that promisors fulfil their promissory duties. As Wenar (2013) argues, so long as this desire is recognised and protected as a role-norm by the system of norms, the system enforces the performance of promissory duties and hence assigns promissory rights to the role of a promisee.

Role/kind-normative attributions of desires seem unquestionable when considering promissory rights, for promises are commonly regarded as the normative and conceptual basis for the contract law (Hogg 2011). Consequently, promissory rights, together with the role-norm generating the role-based desire that promisors fulfil their promissory duties, are recognised in many moral and legal systems all over the world.

Yet, role/kind-normative attributions of desire can become problematic when it comes to other social roles and natural kinds. For people can be uncertain about pinpointing role-norms and kind-norms, and therefore they might have dilemmas regarding how some desires and rights should be assigned to certain roles and kinds. This, in turn, can easily result in disagreements about whether these roles and kinds contain such desires, or whether these desires should be protected by rights. Since Wenar's analysis does not tell what the justification of rights is, it cannot tell us what to do when we have such dilemmas.

To illustrate how role/kind-normative attributions of desire can lead to these disagreements, think about the role of a child. Children, on Wenar's account, are members of a social role (children) and a natural kind (human being). What

⁸ Suppose that you promised me to pay back the money I had lent you a week ago by this Friday. The fact that I intend to use the money for taking my children to the Zoo this weekend neither explains nor justifies my desire, *qua* promisee, to hold the promissory right that you pay the money back by this Friday. My intention to take children to the Zoo comes from my role of a parent, and therefore it is part of my role-based desire to perform my parental duties. Since the Kind-Desire Theory ascribes rights in accordance with *role-based* desires which do not depend on individuals' psychological states, it explains how different people with different interests in the performance of the promised action can hold promissory rights without the need for stipulating which individual interests justify such rights-ascriptions.

role/kind-norms does the role of a child contain? Consider children's status as a human being. Do children, *qua* human being, hold the basic human right of self-determination, from which most liberty rights, such as rights to have sex, to marry, to practise religion, etc., are derived? It is not clear at all whether children, *qua* children, desire to be authorised to do such things, nor is it uncontroversial to claim that children should have those liberty rights. It follows that we are uncertain of children's possession of the human right of self-determination (see, e.g., Archard 2014). In fact, we cannot answer the question of what rights children have unless we justify our (often different) explanations of what children, *qua* children and human beings, desire, and why such desires should be protected by rights. The point is that any offered explanation of some role/kind-based desire in this case is derived from *our* understanding of the role-norms we associate with the role of a child.

Whenever we have dilemmas regarding how some desires and rights should be assigned in problematic cases, such as children, human beings and animals, any successful justification of these ascriptions must be derived from and mirror the *prevailing moral convictions* in the society. Wenar is aware of this:

'Kind-desire analysis predicts that our confidence in our ascriptions of human rights will track our confidence in these desire-attributions. Where we are more confident about what humans as such want, we should be more confident about their rights; and where we are less confident, the rights should appear less certain.' (Wenar 2013: 225)

Accordingly, even though Wenar's analysis claims to be normatively impartial, we must take sides, that is, employ normative theories when discussing many rights-ascriptions based on role/kind-normative attributions of desires. More precisely, the Kind-Desire Theory cannot be used to find out what rights there are unless we know either which system of norms we are describing or what normative theory we are employing. In other words, without some normative background, Wenar's analysis is like an explanation of a wall clock without knowing the meaning of its numbers. I may understand the point that the wall clock shows the time, but to know what time it shows, I must know what its numbers mean. To *this* extent, the Kind-Desire Theory calls for the normative background.

However, we can use Wenar's analysis to describe how claim-rights and duties are assigned in some existing system of norms (e.g., the Scottish legal system) and make no normative judgment that would either approve or criticise such ascriptions. To *this* extent, the Kind-Desire Theory is truly independent of any justificatory account grounded in some moral, political or legal theory.

Considering that the Kind-Desire Theory is an impartial descriptive account of claim-rights, which, nevertheless, requires some normative theory in order to find out what claim-rights there are, there seems to be no reason to exclude virtue ethics from the justification of claim-rights. Therefore, Wenar's analysis opens up an opportunity to start investigating possible connections between claim-rights and virtues. This inquiry should reveal whether or not those rights make the right-holder more virtuous.⁹

To sum up this chapter, I have argued that while most contemporary approaches to the nature of rights are based on Hohfeld's conceptual analysis, most scholars disagree about the precise definition of rights. In most cases, this disagreement stems from different justificatory accounts those scholars defend. Hence, their views of the function(s) of rights play an essential role in their explications of what rights are. There are, as has been illustrated, two dominant descriptive as well as justificatory accounts of rights, the Will Theory and the Interest Theory. According to the Will Theory, rights provide the right-holder with choices or deliberation, and therefore most Will theorists take rights to be paired-privileges and powers. The proponents of the Interest Theory, on the other hand, argue that rights protect and further the right-holder's interests, and thus rights are essentially claims and immunities. Despite these differences, Will and Interest theorists share the assumption that rights can have only one function. Based on

⁹ The Kind-Desire Theory has solved the above-mentioned issue which has troubled Interest theorists for years. As explained, Interest theorists often fail to describe role-based rights because the possession of such rights cannot be explained nor justified by individual interests. Recall the judge's power-right to sentence criminals. None of the judge's interests in possessing and exercising this right can possibly explicate and justify the ascription of that right to this individual judge. Wenar's analysis does not face this issue because the power-right to sentence criminals is ascribed directly to the role of a judge and explained as a necessary instrument for the performance of role-based duties, that is, as a right enabling the judge to achieve and maintain justice in the society.

Wenar's Several-Functions Theory, I have argued that we should reject this assumption and admit that rights have a plurality of functions. Finally, I have presented the Kind-Desire Theory of claim-rights which ascribes rights to social roles and natural kinds in accordance with role/kind-based duties. This analysis of rights, as I am about to demonstrate, enables me to connect the concept of rights with the idea of virtue acquisition *via* the realm of social roles.

CHAPTER II. VIRTUES

Virtue ethics, emerging in ancient Greece, is one of the three main normative theories in the contemporary philosophical thought. The other two are deontology and consequentialism. As explained in the introduction, these theories differ in their attempts to answer somehow different questions. While deontology and consequentialism are concerned primarily with the rightness and wrongness of action, virtue ethics focuses on moral character and its excellences and defects, albeit it is true that most contemporary virtue ethicists also answer the question of rightness and wrongness of action (see, e.g., Hursthouse 1999, Slote 2001).

Though many nowadays advocates of virtue ethics are neo-Aristotelians (Foot 1978, McDowell 1979, MacIntyre 1981, Hursthouse 1999), some have also elaborated different interpretations of virtues (excellences). Michael Slote (2001, 2013) has argued that virtues are grounded in empathy and sentiment, and therefore he draws inspiration mainly from British sentimentalists, such as Frances Hutcheson, David Hume and Adam Smith. Christine Swanton (2003), on the other hand, has developed a theory of virtues based on Epicurean and Nietzschean viewpoints. Julia Driver (1996) and Thomas Hurka (2010), to give the last example, have argued that virtues can be soundly understood only if they are derived from consequentialism. Despite all these differences, Heather Battaly (2010, 2015) points out that there are certain similarities allowing us to unify these theories into ‘two key concepts of virtue’.

In this chapter, I introduce the two key concepts before proposing the working definition of virtues, which will be used throughout the dissertation. I do not argue for or against one of the two accounts of virtues. However, I give my reasons why we should employ an explanation of virtues that combines the essential features of the two key concepts. Virtues, on my account, are acquired traits, qualities and skills which make us better people in general as well as provide us with the practical knowledge of doing the right thing in given, virtue-relevant circumstances. As will be explained, any theorist who takes virtues to be *acquired* traits, qualities and skills must answer the question about how such traits, qualities and skills are developed. Considering that this dissertation investigates how rights make the right-holder more virtuous, the question of virtue

acquisition is central to my argument. Accordingly, the final section of this chapter explicates how people develop virtues.

3. Two ways to understand virtues

There are two main explanations of what virtues are and who possesses them (Battaly 2010, 2015). According to one, virtues are acquired character traits and qualities in part constituted by virtuous motives and virtuous action (the rightness of action) depends upon virtue the action expresses. The other explanation takes virtues to be whatever quality (excellence) that enables someone to reliably attain good ends or consequences. The rightness of action, on this account, is derived from these *good* ends or consequences.

Virtues as acquired character traits and virtuous motives. The first account works on the assumption that virtues are character traits and qualities that need to be acquired (learnt and habituated) and defines virtuous action as action expressing virtues through virtuous motives. Imagine that both X and Y donate money to charity every year. While X donates the money to help others, Y does so because it enables him to get tax write-offs. Although their actions and even the consequences of their actions seem to be the same, only X's action, manifesting the virtue of beneficence through the virtuous motive, can be regarded as virtuous action, for Y's action expresses selfishness coming from a wrong motive (Slote 2001).

This interpretation of virtues is more traditional than the other one and can be found in almost all instances of ancient Greek and Roman moral philosophy except for Epicurean ethics (Irwin 1996). Its most prominent contemporary defenders include Phillipa Foot (1978), John McDowell (1979, 1985), Rosalind Hursthouse (1999), and Michael Slote (2001, 2013).

Virtues as excellences for reliable achievements of good ends or consequences. According to the second account, virtues are whatever qualities (i.e., natural capacities, acquired skills and character traits) enabling us to

reliably attain good ends/consequences. Though motives can certainly help with securing this reliability, they do not play the central role here. This rather recent approach to virtues has been elaborated mainly by Julia Driver (1996) and Thomas Hurka (2010). According to them, virtues are of secondary importance, for the rightness of action (the fundamental question of normative ethics) is derived from achieving good ends/consequences. The principle of reliability, defining what virtues are and who possesses them, does not imply that we must always succeed in attaining such ends/consequences, or that our success is always perfect. Yet, if we wish but constantly fail to achieve some intended goal, we certainly lack goal-relevant virtues (Battaly 2015, Driver 1996).

Consequently, the essential difference between the two accounts of virtues resides in emphasising different principles that determine what virtues are and who has such excellences. Recall the example of the two donators, X and Y, who keep donating their money to charities every year. It has been said that while X donates his money in order to help others, Y does so to get tax write-offs. Imagine now that X, who truly desires to help other people, has constantly failed to achieve that aim, because he keeps donating his money to charity frauds which have used the donated money to fund some illegal or egoistic activities. On the other hand, Y has always succeeded in helping others through donating his money. Most proponents of the first account would argue that irrespective of X's constant failure, only X's action is virtuous. Those who defend the second account would disagree and argue that regardless of Y's actual motive, only Y possesses (goal-relevant) virtues, since he reliably achieves the intended good end/consequence.

4. The working definition of virtues

Both interpretations of virtues, as Battaly remarks, are 'legitimate, and ... neither is any more or less right or real than the other', for the concept of virtue is a 'thin' concept that can be thicken in different ways (Battaly 2015: 25-27). However, there is one reason why we should use the first rather than second account of virtues while working up the virtue-based justification of rights.

As illustrated, the second account of virtues puts emphasis on good ends/consequences. It follows that neither virtues nor motives are of primary importance in its explanation of the rightness of action. If we used this interpretation of virtues, rights would be seen as the right-holder's excellences for reliable achievements of good ends/consequences. Since such ends/consequences can be defined in different ways, for instance, as maximising utility or achieving equality of capabilities, the virtue-based justification of rights I aim to develop would be similar or even identical to those that have been already presented by most utilitarians (Bentham 1789/1996) and many 'capabilitists' (Nusbaum 2006). Thus, any original and unexplored justification of rights based on virtue ethics must employ the first account of virtues which takes virtues and motives, not good ends/consequences, to be the normative ground for the rightness of action.

Furthermore, there is another, third way to understand virtues which combines the two above-mentioned accounts. In fact, most classical theories of virtues consider virtues as character traits and excellences partly constituted by virtuous motives, but also require the principle of reliability in order to detect who has such qualities (Battaly 2015). Linda Zagzebski (1996), a contemporary virtue ethicist, coalesces the two accounts of virtues in similar ways as many ancient philosophers did. Put differently, Zagzebski accepts the centrality of both motive and reliability in detecting whether some action is virtuous. Due to this incorporation of the principle of reliability, her explanation of what virtues are and who possesses them captures most of what the second interpretation demands in an account of virtues. Consequently, in our example of the two donators, X and Y, none of them has the virtue of beneficence. To possess this virtue, X (having the right motive) would need to reliably attain helping others *via* donating the money to charities, whereas Y (reliably achieving the good end) would need to act on the right motive.

The third explanation of virtues seems convincing because most accounts of virtues share the conviction that virtues are excellences. Anyone who has some excellence must also know how to put that excellence into effect. It is hard to imagine that someone is a kind person but constantly fails to act kindly. This person can certainly have *kind*-based (referring to *kindness*) motives whenever

interacting with other people, yet the constant failure exposes his or her *inability* to act kindly. Since kindness is, presumably, unintelligible when detached from its expression in action while interacting with others, the person's inability to act kindly also reveals his or her lack of kindness. Moreover, many virtue ethicists since Aristotle have argued that virtues are excellences because they provide us with the practical knowledge of how to *do the right thing in the right place at the right time*. This 'know-how' implies the principle of reliability for to act kindly means to be kind in the right place at the right time. Put differently, some situations do not call for kindness and it would be in fact wrong (defective) to act kindly in these circumstances. Accordingly, the person who desires to be kind yet constantly fails to act kindly *does not know* how to put kindness into effect, and therefore it is unconvincing to claim that that person possesses the excellence of kindness.

Therefore, I believe that Zagzebski is correct in combining the two accounts of virtues. For the purpose of elaborating the virtue-based justification of rights, I propose the following working definition of virtues, which is based on the works of Zagzebski (1996) and Battaly (2015), and which will be used throughout the dissertation:

The working definition: Virtues are acquired traits, qualities and skills that make people better people in general. They also provide people with the practical knowledge of what is the right (even best) thing to do in certain, virtue-relevant circumstances. To know how to do the right thing in the right place at the right time implies the reliability of attaining intended goals. Therefore, virtuous action is action which both manifests goal-relevant virtues and reliably leads to intended goals.

5. The development of virtues

Any virtue ethicist who claims that virtues are *acquired* traits, qualities and skills must answer the question of how such excellences are developed. Given the working definition of virtues offered in the last section and the aim of this dissertation, the question of virtue acquisition is central to my thesis.

Recently, two phenomenal books on the development of virtues have been published, one edited and second co-edited by Nancy E. Snow (Snow 2015, Annas, Narvaez, Snow 2016). The books ‘challenge disciplinary isolation’ of virtue by connecting scholars from other fields to gain an interdisciplinary insight into virtue acquisition (Annas, Narvaez, Snow 2016: 1). There are, in short, many different explanations of how people can acquire virtues (see, e.g., Annas 2011, Narvaez 2015, 2016, Thompson 2015). In this section, I focus solely on Snow’s own account for two reasons. First, her explication is based on a large amount of empirical research (Snow 2010, 2016). Second, Snow’s account permits developing virtues indirectly through perfecting social roles, and therefore it allows me to continue with researching into the links between rights that are ascribed to social roles and the idea of virtue acquisition.

According to Snow (2016), there are three ways to develop virtues, called (1) *Habits of the Folk*, (2) *Intelligent Virtue: skill and expertise*, and (3) *the Way of the Junzi*. The only important thing for us here is that these ways differ from each other in one’s motivation to acquire virtues. While both (2) and (3) presuppose the direct motivation to cultivate excellences, (1) explains how people develop virtues indirectly. Since it is (1), also named ‘the Minimal Virtue of the Folk’, which is incentive to the virtue-based justification of rights elaborated in the subsequent chapters, I am concerned only with this account of virtue acquisition.

To clarify the difference between direct and indirect motivations, think of Michael who aims to become a police officer, and Paul who strives for being a good father. To become a police officer, Michael must acquire certain skills and knowledge before he can (i.e., *is authorised to*) occupy the role of a police officer. Considering his desire to become a police officer, Michael is directly motivated to acquire such skills and knowledge. On the other hand, Paul is a father and will (most likely) occupy the role of a father irrespective of whether he acquires some other qualities or not. However, since Paul desires to become a good parent, he starts reading the literature on parenting, following its practical advice, as well as emulating people whom he regards as exemplars of a good parent. In so doing, Paul might well, sooner or later, develop qualities which come with good parenting, such as kindness, compassion, honesty, respectfulness, and patience.

Anyone who has read some books on parenting knows that almost all of them give the same practical advice, stating that you must *be* (i.e., constantly manifest) those traits you hope to develop in your children. The point is, as Snow (2016) argues, that there is a high probability that Paul will develop some or perhaps all such qualities even though he does not directly aim to acquire them. For it is his motivation to perfect his role of a father and subsequent attempts to become a good father that lead to the development of these virtues.¹⁰

The Minimal Virtue of the Folks explicates the indirect development of virtues on the cognitive basis. This acquisition happens ‘outside of conscious awareness through habits aimed at attaining virtue-relevant goals, imitating virtuous role models, or following practical advice’ (Snow 2016: 136). Snow (2016) maintains that both emulating role models and following practical advice can be explained in terms of goals. After all, Paul *aims* to become a good parent, and *therefore* he follows the practical advice and imitates role models. People, as Snow (2010, 2016) illustrates, can acquire virtues by achieving ‘virtue-relevant goals’, that is, goals associated often (though not necessarily) with *role-based* activities and tasks which require certain qualities and skills (virtues) for their successful performances. This is supported by the so-called ‘dual process theory’, which explains why some virtue-relevant goals can be more easily accessible to our consciousness than other goals.

According to the dual process theory, there are two kinds of cognitive processing, *conscious* and *automatic*:

‘Conscious processing is the familiar sort in which conscious or deliberate attention is brought to bear on a problem or activity. ... Automatic or unconscious processes ... operate outside conscious awareness ... [and] include frequently performed and routinized actions.’ (Snow 2016: 139-140)

Whenever someone holds some goal over a long time, the goal becomes ‘goal-dependent automaticity’, stored in his or her automatic processing. Being a parent

¹⁰ Snow (2016) also remarks that except for people who aim to occupy specific roles (e.g., soldiers, police officers, judges, etc.), most people living in the Western secular culture are not interested in the direct development of virtues. Yet, many people, she adds, do acquire virtues *indirectly*.

means primarily to care for children. Good parents, presumably, have a ‘caring for’ as their goal, and they hold the goal over a long time. Thus, the caring-for goal becomes goal-dependent automaticity. The goal is more readily accessible to their consciousness than other goals for it is easily triggered by similar, *goal-relevant* situations, that is, whenever such parents encounter situations that call for caring. Snow (2016) argues that this immediate access is provided by ‘the representation of a value-relevant goal’, which is located at the forefront of consciousness, but the actual activation of that representation occurs outside of conscious awareness:

‘...researchers have documented that representations of a variety of value-relevant goals (for example, the disposition to cooperate) are nonconsciously activatable across a number of situation-types. This suggests that representations of virtue-relevant goals, too, can be activated by situational features across types of situations, resulting in virtue-expressive actions that cross situation-types. The repeated performance of such actions results in habits of virtuous behaviour, which build up virtuous dispositions over time.’ (Snow 2016: 140)

Furthermore, representations of value-relevant goals, as Snow (2016) continues, can become stable parts of someone’s personality because of ‘schemas’, the concept elaborated by developmental psychologists Lapsley and Hill (2008). Schemas are ‘general knowledge structures that organise information, expectations and experience’, which develop in accordance with our individual experiences (Lapsley and Hill 2008: 322). Put differently, one’s constant processing of certain inputs sets relevant individual schemas. Snow suggests that representations of value-relevant goals (including representations of role models and how to enact practical advice) are ‘contextualised’ by such individual schemas. Accordingly, schemas become ‘essential parts of ... “personality scaffolding” of virtue—the personality and knowledge structures that support virtuous action, habituation, and dispositions’ (Snow 2016: 141-142).

Therefore, even people who are not directly motivated to cultivate virtues may develop virtues through aspiring to achieve *virtue-relevant goals*. Since one’s motivation to perfect his or her social role(s) is a virtue-relevant goal, it implies that anyone who strives for perfecting some social role(s) will eventually acquire (some or even all) *role-relevant* virtues. This indirect motivation results in the development of such excellences for the individual conducts *repeatedly* actions

which express goal-relevant virtues necessary for successful performances of his or her role-based activities and tasks.

In Chapter I., I have introduced the Kind-Desire Theory which ascribes rights to social roles and natural kinds in accordance with role/kind-based desires. Many rights exist so that their holders can fulfil role/kind-based duties, activities and ends. Recall the right to sentence criminals that enables judges to achieve and maintain justice in the society. There is no reason to think that role/kind-based desires to perform such role/kind-based duties (activities, etc.) cannot be value-relevant goals held over a long time. Most individual judges, I believe, aim to achieve and maintain justice in the society, and they seem to hold this goal at least so long as they occupy the role of a judge. It follows that if some role/kind-based desire is held over a long time, it becomes the representation of value-relevant goal operating in our automatic cognitive processing. Therefore, Snow's explanation of this indirect virtue development is compatible with Wenar's analysis of claim-rights. This compatibility opens up an opportunity for connecting the concept of a right with the idea of virtue acquisition, which is my next task.

To sum up, I have presented two key concepts of virtues and argued that we should use the account of virtues which combines the central principles of the both concepts (motives and reliability) when elaborating the virtue-based justification of rights. Accordingly, virtues are acquired traits, qualities and skills that make us better people in general and provide us with the practical knowledge of how to do the right (even best) thing in virtue-relevant situations. This implies that virtuous action is action which expresses goal-relevant virtues and reliably leads to intended good (virtuous) goals. Considering that virtues are *acquired* traits, qualities and skills, I have also introduced Snow's Minimal Virtue of the Folk in order to clarify how people develop virtues. People, as has been illustrated, acquire goal-relevant virtues *via* aspiring to achieve virtue-relevant goals, such as perfecting their social roles, and this acquisition occurs irrespective of their motives to cultivate such excellences.

CHAPTER III. RIGHTS AND VIRTUES: FIRST ENCOUNTER

The Minimal Virtue of the Folk demonstrates that people develop goal-relevant virtues through perfecting social roles. The heuristic model of virtues worked out in this chapter explains how some role-based rights make the perfection of social roles possible. More precisely, I am going to argue that the so-called ‘enabling rights’ make right-holders more virtuous because they allow them to strive for approximating role models.

Enabling rights are rights which *enable* the right-holder to carry out his or her duties and activities. Such rights differ from those that exist principally to protect the right-holder’s desires (including interests and well-being), which will be called ‘protective rights’ throughout the dissertation.¹¹ This distinction is in accordance with Wenar’s two types of desire-attributions explained in Chapter I. Consequently, the main difference between enabling rights and protecting rights is that the former are ascribed to perform duties, activities and ends, whereas the latter are assigned to protect desires that some duties, activities and ends are fulfilled by other people. To give some examples, consider the roles of a parent and a promisee. Most rights someone holds as a parent are role-based enabling rights, for they exist so that parents can carry out their parental duties, activities and ends. Promissory rights, on the other hand, protect the role-based desire that promisors fulfil their promissory duty to keep promises. This desire comes with the role of a promisee as its *norm*, meaning that it is not determined by some role-based duties, activities and ends the promisee, *qua* promisee, must perform.

This chapter is concerned only with role-based enabling rights and their function of virtue acquisition. In short, I argue that on condition that someone strives to perfect some social role, role-based enabling rights (derived from that

¹¹ Note that the distinction between enabling and protective rights applies to natural kinds too, though most human and animal rights appear to be protective rather than enabling rights. Moreover, considering that many people also strive to perfect their humanity (the natural kind of a human being), the Minimal Virtue of the Folk need not be restricted to social roles. Accordingly, if there is some human (kind-based) rights which are enabling rights, such rights can develop virtues in the same way as role-based enabling rights, and this development is explained by the heuristic model of virtues.

role) allow this person (the right-holder) to develop role-relevant virtues as well as express them in action whilst performing role-based duties, activities and ends. To demonstrate this, I need to substantiate that the idea of virtue acquisition is compatible with the realm of social roles, and that the way someone exercises such rights is the way that leads to the development of virtues. I illustrate that social roles and the idea of virtue acquisition go hand in hand due to the interpretative nature of social roles, that is, the fact that the same role can be understood differently by different individuals. Furthermore, I argue that any development of some role-relevant virtue is possible only because of this interpretative nature and one's possession of role-based enabling rights allowing this right-holder to approximate the ideal role model.

I start with clarifying what social roles are and why they are central to our morality, for finding out their characteristic features is important for connecting the realm of social roles with the idea of virtue development. Then, I present virtue contextualism, developed by Sarah Wright (2010), according to which virtues can be understood and expressed only *in relation to* roles individuals occupy. In the following section, I explicate how the heuristic model of virtues works and deal with certain issues arising from the interpretative nature of social roles. Finally, I introduce two main objections to the heuristic model of virtues and argue that none of them undermines the idea that role-based enabling rights make the right-holder more virtuous.

6. Social roles and virtue contextualism

Social roles have been studied primarily by sociologists and social psychologists (Mead 1934, Parsons 1951, Goffman 1956, and Berger and Luckmann 1991), who are particularly interested in the social structure, social institutions, institutionalised human conduct, and the distribution and acquisition of social knowledge. 'All institutionalized conduct', as Berger and Luckmann point out, 'involves roles. ... The roles represent the institutional order and only through this representation in performed role can the institution manifest itself in actual experience' (Berger and Luckmann 1991: 92).

Philosophers, on the other hand, overlooked the importance of social roles in our everyday lives for a long time. The first philosopher who started inquiring seriously into social institutions, roles and their effects on our life was Hegel (Hardimon 1994). British idealists, namely T. H. Green and F. H. Bradley, drew main inspiration from him and it was Bradley's (1927) 'My station and its duties', a chapter in his *Ethical Studies*, that offered the first elaborate explanation of role obligations in British moral philosophy. Albeit it is true that some modern political philosophers (e.g., Rawls 1971 and Dworkin 1986), also deal with the concept of social roles, '[c]ontemporary moral philosophers have, by and large, neglected [social] obligations, regarding them as marginal at best'; yet, as Michael O. Hardimon (1994) argues, 'they are central to morality and should be taken seriously' (Hardimon 1994: 333).

Many agree (e.g., Berger and Luckmann 1966, Hardimon 1994, Radden and Sadler 2009) that social roles are central to morality for two reasons. First, they provide role-bearers with role-based *practical reasons* to act in certain ways. For roles 'refer to constellation of institutionally specified rights and duties organized around an institutionally specified social function' (Hardimon 1994: 334). Such constellations include also role-relevant values and even emotions. While judges, for instance, must know when to restrain their feelings of compassion, doctors should know how to display this feeling appropriately. The second reason consists in the fact that roles confer and partly constitute an individual's *identity*. The role identification, Hardimon explains, resides in (i) occupying the role, (ii) recognising that one occupies the role, and (iii) conceiving of oneself as someone for whom the norms of the role function as reasons.

I add that there are two other reasons why social roles are central to morality. They provide people with *expectations* of what role-bearers should do, and these expectations call for the *appraisal of* expected role-relevant behaviour. Both my expectations of other people's role-relevant conduct and my awareness of the fact that others also expect me to act in role-relevant ways belong to the most essential building blocks of the social reality. In other words, social roles are essential to human action and interaction in the society

Many virtue ethicists (e.g., MacIntyre 1981, Battaly 2015) are sceptical about finding the fundamental connections between social roles and virtues. Virtues, they claim, are traits, qualities and skills of persons not of role-bearers. Yet, Sarah Wright (2010) argues that there are in fact such fundamental connections between roles and virtues, because virtues can be understood and manifested only within the realm of roles (including humankind). Wright's 'virtue contextualism' works on the assumption that we are embedded in our lives with already existing duties, activities and ends, and therefore with created and defined expectations. This embodiment starts with our birth due to noncontractual roles, that is, roles we are born into, such as familial roles and citizenship. It follows, as Wright asserts, that someone is always virtuous *in the role of* ____ (including humankind). Moreover, the idea of mean, a desirable middle between two extremes, is unintelligible in a 'vacuum' created by separating virtues from the reality of roles. In other words, to pinpoint the mean, which is central to Aristotelian understanding of virtues, we must know *which* role the individual occupies. For any expression of the two extremes of some virtue, say, cowardice (a defect of the virtue of courage) and foolhardiness (an extreme of the virtue of courage), always relates to social roles and their practical reasons for action (Wright 2010).

Consider Wright's example of a police officer and a bystander who both witness a burglary. Though they both face the same situation, their virtuous actions differ. While chasing the criminal expresses courage in the action of the police officer, the same action expresses foolhardiness in the case of the bystander. There are two reasons explaining this conclusion. First, the bystander, *qua* bystander, lacks a proper training of how to catch and restrain criminals. Second, even if the bystander has been in some similar training for catching and restraining criminals, he or she lacks the police officer's role-based enabling right to stop and seize other people. This is the first direct link between a role-based enabling right and the right-holder's expression of virtue in action while performing role-based duties, activities and ends.

Wright's virtue contextualism is also supported by the normative features of social roles. Because of the role identification, the police officer, *qua* police officer, has different practical reasons to chase the criminal than the bystander.

Moreover, and perhaps more importantly, there are also different expectations of role-relevant behaviour calling for different evaluations of the actual actions of the police officer and the bystander. Those normative features of social roles seem to capture *why* the same action, chasing the criminal, can express both courage (in the case of the police officer) and foolhardiness (in the case of the bystander). Thus, virtues are always understood and expressed in relation to roles occupied by individuals, even though they are traits, qualities and skills of those individual persons. How do we know which action in the realm of one particular social role expresses virtues and which action does not? We know it because we know the heuristic model of virtues which defines the perfect standard of role-relevant behaviour.

7. The heuristic model of virtues

To know the perfect standard of role-relevant behaviour, we need to know an *ideal* role model. The heuristic model of virtues is such an ideal role model, defining what role-relevant virtues are and how they are to be expressed in action. The heuristic model also explains how role-based enabling rights develop role-relevant virtues while perfecting social roles. In principle, any actual role-bearer can always imagine what an ideal role model would do in given, role-relevant circumstances. Consequently, any actual role-bearer can always strive to approximate such an ideal (virtuous) role model. If we had no role-based enabling rights, we would be unable to approximate such ideal role models, and therefore we could neither acquire role-relevant virtues nor express them in action while performing role-based duties, activities and ends.

To assert that *any* actual role-bearer can *always* imagine the heuristic model implies that the heuristic model is available to anyone who occupies some social role. In order to explain this availability, we need to recall some normative features of social roles, namely the fact that roles create expectations of what role-bearers should do as well as call for the appraisal of actual role-relevant conduct. When we expect some role-relevant behaviour, we usually expect the minimal standard of the performance of role-based duties, activities and ends. As

will be argued, any evaluation of some actual performance presupposes the knowledge of both the expected minimal and perfect standards of that performance, and hence anyone who participates in evaluating other people's role-relevant behaviour claims to know the heuristic model of role-relevant virtues.

The expected minimal standard is derived, *to a large degree*, from our common understanding of what social roles are. This understanding is shared by members of the society and comprises of their awareness of social institutions, their functions as well as of the basic package of role-based rights, duties, norms, values, etc., defining each social role. Without this common understanding, which I shall call 'the common knowledge of social roles', we would not know that bartenders serve customers at the bar, judges aim to achieve and maintain justice, car mechanics check and repair cars, etc. This common knowledge suggests that we have similar expectations of conduct associated with the same social role.

However, the expected minimal standard is context-dependent and often derived from people's different experiences with actual performances of role-based duties, activities and ends. If we pay for the top-class services, we reasonably expect the top-class performances of individuals whose work is to deliver the services. Although our expectations in this case are derived from our understanding of the ideal role model representing the perfect standard, such expectations still constitute the expected minimal standard. Consider also people who have always travelled first class. Such people may well find the expected minimal standard of second class travelling being below *their* expected minimal standard. Consequently, different people seem to have somehow different expectations of the minimal standard when it comes to the same (similar) social role due to their different experiences. (I will argue later that the common knowledge of social roles secures that the minimal standard is *essentially* the same for everyone.)

Expecting certain role-relevant behaviour often calls for the assessment of actual actions conducted by individual role-bearers. To tell whether some performance is 'good', we need to know *both* the minimal and perfect standards

of role-relevant behaviour. In fact, any evaluation of an *actual* performance of role-based duties, activities and ends is based on the gradual evaluative system consisting of at least four general marks. For any performance can be regarded as *poor* when it is below the expected minimal standard, as *appropriate* if it reaches the minimal standard, as *well* when this performance is close to the perfect standard, and *excellent* or *perfect* when it achieves the ideal (virtuous) standard. It follows that whenever we take part in evaluating some actual role-relevant behaviour, we determine its minimal and perfect standards, and then we pinpoint the actual performance in accordance with the two standards in order to appraise it by one of the four general marks. In other words, whenever we participate in this evaluation, we claim to know the expected minimal standard as well as the perfect standard of role-relevant behaviour.

To know this perfect standard is to know what an ideal role model would do. A good parent is any parent who comes close to the ideal parent, representing the perfect standard of performances of parental duties, activities and ends, whereas poor parents diverge too far from this ideal, for they do not reach the expected minimal standard. Since we do evaluate people's actual role-relevant conduct daily, we *all* claim to know the heuristic model of role-relevant virtues, and therefore the heuristic model seems to be available to everyone. Perhaps more importantly, it is available to role-bearers for they also appraise their actual fulfilments of role-based duties, activities and ends. The point is that we would not be able to strive for perfecting social roles without the knowledge of ideal role models we must approximate in order to perfect these roles. Accordingly, the evaluative viewpoint of role-bearers is of primary importance in this chapter.

Therefore, the perfection of a social role consists in approximating the perfect standard of role-relevant conduct. Social roles, as explained, are constellation of institutionally specified rights and duties, ascribed to them by social institutions the roles represent. Given that enabling rights are ascribed to social roles so that individual role-bearers can perform role-based duties, activities and ends, it seems that such rights also allow role-bearers to strive for approximating ideal role models. In the next section, this thought will be worked out in detail.

8. The interpretative nature of social roles

It has been argued that the heuristic model of virtues is available to everyone, but does it mean that everyone has the same understanding of this model when it comes to the same social role? If different people can have different expectations of the minimal standard of the same role-relevant behaviour, why should they have the same views of its perfect standard?

There is no doubt that role-bearers have a more detailed understanding of their role-based rights, duties, etc., than people who do not occupy such roles. Think of Paul, who is a father, and David, who is not interested in children at all. Both Paul and David know what the role of a parent is because they share the common knowledge of social roles. Yet, it is very unlikely that they share the same views of an ideal parent representing the perfect standard of role-relevant behaviour simply because of Paul's personal experience with parenting. Suppose also that Paul aims to be a good father and therefore actively searches for practical advice by reading books on parenting and emulates people whom he regards as exemplars of a good parent. These activities help Paul define as well as *constantly redefine* his understanding of the ideal parent. Had David been interested in parenting, their views of the heuristic model could have been less different.

However, even two individuals occupying the same role can have somehow different definitions of the ideal role model, because the same role can be understood differently by different individuals. For some, ideal parents earn enough money to satisfy all the needs and desires their families might have, whereas for others ideal parenting consists in spending as much quality time with their families as possible. As Hardimon (1994) explains, all these differences stem from the so-called 'interpretative nature' of social roles. I have asserted that we can tell which actions are virtuous in the realm of some social role due to our knowledge of the heuristic model of role-relevant virtues. Does the interpretative nature of social roles imply that one's understanding of role-relevant virtues depends on one's interpretation of social roles?

This section demonstrates that the common knowledge of social roles secures that people's views of the minimal and perfect standards of the same role-relevant conduct are *essentially* the same. I also argue that the interpretative nature of social roles is vital to the idea of virtue acquisition *via* perfecting social roles, for it creates the scope for this perfection.

First and foremost, although we can understand the same role differently, we cannot 'custom tailor' role-based rights and duties, because they are *firmly* organised around an institutionally specified social function (Hardimon 1994). Role-based rights and duties, as explained above, form a significant part of the common knowledge of social roles. If we did not have this knowledge, we would not know what particular roles are and we could neither expect role-relevant behaviour nor evaluate role-bearers' actual performances. This common knowledge also seems to delimit our possible interpretations of social roles. No interpretation can be radically different from the common knowledge since it would produce actions that could not be recognised as *role-relevant* behaviour. Imagine a father letting his eighteenth-month old child drinks alcohol because he believes that one of the most important parental duties is to provide all children with total liberty. Not only is this interpretation controversial and, arguably, wrong, it is too alien to our common knowledge of the role of a parent. There is a high probability that observers who do not know the relationship between the father and the child will not recognise him as the child's father because of his radically divergent interpretation of the role of a parent.

The same applies to our expectations of the minimal standard and views of the perfect standard of role-relevant behaviour, for such standards are also derived, to a large degree, from and limited by the common knowledge of social roles. Accordingly, any radical interpretation would make our expectations and evaluation socially unrealistic. The expected minimal standard would fail to capture the commonly-defined appropriateness of human action associated with the role, and the perfect standard would be manifested in performances that do not represent the commonly-defined essence of the role. It follows that such radical interpretations fail to pinpoint the ideal role model, and hence they cannot define what role-relevant virtuous are and how such qualities should be expressed in action. In other words, the common knowledge of social roles secures that

everyone has *essentially* the same understanding of the minimal and perfect standards of the same role-relevant conduct.

Furthermore, the interpretative nature of social roles is vital to the idea of virtue development through perfecting social roles for two reasons. First, it creates the scope for individual approaches towards social roles and their role-based rights and duties. Second, this scope permits the development of role-relevant virtues because it allows role-bearers to exercise their role-based rights in different ways whilst performing role-based duties, activities and ends. These differences in exercising the same role-based right, in turn, expose whether or not such individuals are motivated to perfect the social role they occupy.

Consider two police officers, David and Michael. Michael witnesses two men who are assaulting a woman in the street. Since he keeps in training in order to be capable of dealing with similar situations, Michael *knows* what to do and, consequently, takes actions against two men. Given that the main duties of a police officer are maintaining and enforcing social order, Michael knows how to perform his role-based duties. This exposes Michael's approach towards the role he occupies, for he appears to endeavour to perform his role-based duties well or even excellently. David, on the other hand, is not interested in developing martial arts skills, nor does he care about preparing himself for such situations in any other way. Suppose that this lack of interest comes from David's interpretation (whatever it might be) of the role of a police officer. When he happens to face the situation of the two men assaulting a woman, he lacks both the practical knowledge of what to do and the skills that create this knowledge. Put differently, David, unlike Michael, does not know how to fulfil his role-based duties. The only option David seems to have is to call his (more competent) colleagues, which is the same thing the virtuous bystander would do. Consequently, David's role-relevant behaviour is seen as the failure to achieve the expected minimal standard, and thereby as the manifestation of incompetence and, presumably, a role-relevant vice: cowardice.

The role of a police officer contains both enabling rights allowing *any* individual who occupies the role to reach at least the expected minimal standard of performances, and duties which require the development of certain qualities

and skills (virtues) to be fulfilled successfully. The point is that David's lack of interest in acquiring such virtues reveals his personal approach towards his role-based enabling rights and duties, which also indicates that he is not motivated to perfect his role of a police officer. Moreover, his failure to reach the minimal standard while fulfilling role-based duties shows that he is rather a poor police officer who may sooner or later lose a job. Therefore, role-based enabling rights and duties can be exercised and performed in different ways that mirror individual approaches towards the role itself. Such different approaches, stemming from the interpretative nature of social roles, allow us to tell a lot about individuals who occupy that role.

The example of the two police officers also demonstrates that role-based enabling rights and role-based duties function as *socially constructed instruments* for the development of virtues and the expression of virtues in action.¹² There is no doubt that Michael strives for perfecting his role of a police officer and hence we can conclude that he endeavours to approximate the ideal police officer. However, had he had no such role-based enabling rights allowing him to perform his role-based duties, he would have been unable to approximate the heuristic model. Recall the example of the police officer and the bystander who both witness a burglary. In this case, the police officer can express courage in action because he has the practical knowledge of how to restrain criminals as well as the role-based enabling right which empowers him to put this knowledge into effect. As suggest in that example, it is the possession of the police officer's right that, first and foremost, permits the manifestation of courage whilst chasing the criminal. Since the bystander lacks this enabling right, he or she has different practical reasons for action in the situation which make chasing the criminal foolhardy.

It follows that role-based enabling rights help to explain the difference between virtuous and vicious actions *in social roles*, and therefore they also define (at least partially) what *role-relevant* virtues are. This difference cannot be fully described unless we admit that social roles can be understood differently, that is,

¹² *Role-based* enabling rights and duties are *socially constructed* instruments because they are defined and ascribed by *social institutions*.

unless we accept the interpretative nature of social roles. It is this characteristic feature that creates the scope for individual approaches towards the same role and its role-based rights and duties. Police officers who only keep up with the minimal standard of role-relevant behaviour might, like David in our example, find themselves incompetent in many situations while exercising role-based enabling rights in order to carry out role-based duties, activities and ends. Consequently, they can often fail to express role-relevant virtues.

Furthermore, the interpretative nature of social roles goes hand in hand with the Minimal Virtue of the Folk, according to which people can develop virtues through perfecting social roles. It is also compatible with the heuristic model of virtues clarifying why role-based enabling rights are necessary for the development of virtues *via* perfecting social roles. Imagine the world where social roles are not understood differently. If there was only one way to understand role-based rights and duties, there would be only one way how to exercise such rights and carry out such duties. The gradual evaluative system we use when assessing actual role-relevant behaviour would make no sense, because there would be only two options when it comes to the occupation of social roles. Individuals either reach the expected standard of performances or they fail to reach it. It implies that there would be no scope for virtue acquisition within the realm of social roles, since there could be only one standard of role-relevant conduct. Though it is true that some social roles may be less prone to different personal approaches than others, the idea that there are only two options when occupying social roles conflicts with *our* reality of social roles. For I believe that the sphere of each social role permits and, in most cases, calls for innovativeness and an active personal development.

Such an active personal development is often described as *the personal growth* in the domain of professions, and there is no doubt that the majority of social roles we occupy are professional roles. The idea of the personal growth is central to the concept of a promotion at work. When considering whether to give someone a promotion, we evaluate that individual's ability to perform new and/or additional duties, activities, etc., at least at the appropriate (minimal) level, and then we cogitate whether the quality of his or her performances will eventually improve. In other words, we try to find out whether the person is ready for the

personal growth that comes with the new opportunities and tasks.¹³ This, I believe, gives us an evidence that the realm of social roles is completely compatible with the idea of virtue acquisition, because any personal growth whilst occupying some social role must reside in developing *role-relevant* virtues.

To summarise this section, I have illustrated that the heuristic model of virtues is a complement to Snow's Minimal Virtue of the Folk, because it explains, on the *social-role* basis, how people can develop role-relevant virtues through perfecting social roles. More precisely, the heuristic model represents the perfect standard of role-relevant behaviour which is, in its essence, available to anyone who participates in evaluating someone else's actual role-relevant conduct. Nobody, I have argued, can strive for approximating the heuristic model without the possession of role-based enabling rights that allow this approximation. Therefore, such rights are necessary for the development of role-relevant virtues and have the function of virtue acquisition. However, role-based enabling rights have this function only because of the interpretative nature of social roles. The fact that different people understand the same role differently permits individual approaches towards the role and its rights and duties. Any individual striving to perfect some social role must attempt to exercise his or her role-based enabling rights in the way the ideal role model would do. It follows that if there were only one way how to exercise such rights in order to fulfil role-based duties, activities and ends, there would be no scope for development. Consequently, role-based enabling rights and role-based duties are socially constructed instruments for both *the personal growth* (virtue development) and *the manifestation of role-relevant virtues* in action.

9. Objections

There are, I believe, two main objections to the heuristic model of virtues. The first one questions connections between social roles and virtues, the second objection challenges the idea that someone can develop and possess only some

¹³ I am grateful to Dr Hugh Lazenby for this idea.

role-relevant virtues. In this section, I argue that none of them undermines the heuristic model.

Some virtue ethicists (e.g., MacIntyre 1981, Battaly 2015) have been sceptical about finding the fundamental connections between social roles and virtues. They argue that virtues are traits and qualities that constitute character and make us better people in general, whereas social roles split character due to their different practical reasons and norms. Character, as Radden and Sadler explain, is ‘the unique and idiosyncratic construct that holds, and holds together, all the dispositions and traits making each individual the unique person, and moral agent’ (Radden and Sadler 2009: 153). Such virtue ethicists then point out that certain social roles require the development of qualities and skills which are normally (i.e., outside their role-relevant context) seen as defects or vices. Consequently, individuals who perfect these roles will eventually acquire defects affecting their moral characters. To use Battaly’s (2015) example, the role of a police interrogator can be perfected only if individuals cultivate dishonesty (i.e., become good at lying and manipulating). How, as these virtue ethicists wonder, can the perfection of social roles such as a police interrogator lead to the development of virtues?

The issue concerns also human conduct which is socially unacceptable and considered as social deviance. Good serial killers and thieves seem to manifest high intelligence, shrewdness, courage, and perhaps even justice. Think of Dexter (American television series), a serial killer who cannot resist his need for killing people but kills only criminals who are fugitives from justice, or the story of Robin Hood, the famous outlaw who is said to have robbed the rich to help the poor. Do good serial killers and thieves possess such virtues?

The answer to the two-sided problem is that (i) although some individuals can be affected by the development of role-relevant qualities and skills usually seen as defects, most of them will not be, and that (ii) severe social deviance can never result in virtue acquisition. Consider the second answer first. According to Wright, virtues can be acquired and manifested only in the sphere of social roles that are intrinsically valuable:

‘There are some social roles that are not valuable in themselves. Perfection of these social roles does not count as a virtue. One can develop the skills needed to become a good thief; yet this is not to develop a virtue. For virtues are part of *an overall good life*; they are excellences of *a person*. If a social role is compatible with living well, then we can develop virtues within that social role. But if a social role is incompatible with living a good life, developing an “excellence” within that social role will not count as a virtue. An excellent thief is not an excellent person.’ (Wright 2010: 108)

Another, additional way to explain why ‘roles’ of serial killers, thieves, etc. are not intrinsically valuable is that these roles are not social roles at all. As explained, social roles represent social institutions and their specific social functions. Murderers, thieves, etc. do not represent any social institution, for they are social deviance. Deviance, according to sociologists, is any behaviour violating social norms and rules (Andersen, Taylor, Logio 2016: 148). Consequently, any instance of social deviance is, arguably, incompatible with an overall good life. Despite the fact that social deviance is always relative to the society and its culture, I assume that certain types of human conduct, such as murder, rape, theft, etc., have been always regarded as the severe (often punishable) manifestations of social deviance in most cultures all around the world. Therefore, I conclude that no perfection of severe social deviance can develop virtues.

Social roles that require the cultivation of role-relevant qualities and skills seen as defects (vices) seem to pose a real threat to both virtue contextualism and the heuristic model of virtues. Given that virtues make us better people in general, it follows that vices must be defects that make us worse people in general. Accordingly, the development of such defects *via* perfecting social roles requiring these vices for the successful performance of role-based duties, activities and ends corrupts one’s moral character.

One solution to this problem lies in the so-called ‘role set’, a sociological term describing the fact that many people occupy more than one social role at the same time. I believe that if we balance the numbers of good qualities/skills and of defects required for the perfection of someone’s role set, good qualities and skills will always outweigh defects. It is still true that any acquired defect might affect one’s character, and therefore some individuals who strive for perfecting the role of a police interrogator can eventually start lying and

manipulating with others when occupying other social roles. Moreover, it is also true that the role of a police interrogator might attract people who tend to lie and manipulate more than those who are usually honest. Such people will also easily achieve the perfect standard of role-based behaviour than honest people. However, I do not think that individuals who are police interrogators must necessarily become worse or even vicious people in general, for they occupy tens of other social roles which, overall, demand the development of many role-relevant virtues.

Another solution is that the role of a police interrogator represents a social institution, namely the criminal justice institution, and its function consisting in solving crimes and achieving justice. Based on the working definition of virtues offered in Chapter II., virtues provide us with the practical knowledge of how to do the right thing in the right place at the right time, which, in turn, enables us to reliably achieve intended aims. Accordingly, it can be argued that since virtues are always understood and expressed in relation to social roles, the development of lying and manipulating while perfecting the role of a police interrogator is not the cultivation of dishonesty but virtue acquisition. For being a good liar and manipulator is, arguably, the best thing to do in given, role-relevant circumstances.

The second objection to the heuristic model of virtues questions the idea that someone can develop and thereby possess only some, role-relevant virtues. It works on the assumption that one virtue cannot exist without the others, called 'the unity of virtues'. In the Western philosophical tradition of virtue ethics, philosophers have spoken of cardinal virtues. For ancient Greek philosophers, there were four cardinal virtues: *prudence*, *justice*, *temperance*, and *courage*. Most Christian philosophers added also *faith*, *hope* and *charity*. These virtues were thought to be united and essentially interconnected. Therefore, one virtue could not exist without the others and moral agents could not be virtuous unless they had all the virtues.

This explanation of virtue implies the idea that there are two levels of human conduct, one, which is *perfect* and virtuous, and the other, which is *imperfect* and subject to a gradual system of moral evaluation. Perfect (virtuous action) does

not permit any degree of imperfection. As Adam Smith points out, acting virtuously is like ‘shooting at a mark, the man who missed it by an inch had equally missed it with him who had done so by a hundred yards’ (Smith 1759/1982: 291), and only those who hit the mark act virtuously. Considering that someone does not possess some virtue unless that person has all the virtues, it seems that only *fully* virtuous agents can in fact express virtues in action. Such an intransigent interpretation of virtuous agency also implies that only few extraordinary people can actually achieve this level of perfection. Consequently, the fully virtuous agency has always functioned primarily as the model of virtue which helps ordinary people to deal with their everyday struggles, efforts and moral dilemmas. Any imperfect action, on the other hand, is gradually evaluated on the basis of how far it is from the perfect action. The closer to perfection the action gets, the morally better it is, even though it remains imperfect (non-virtuous). The bottom line of this gradual system is the appropriateness of imperfect action, grounded in the accepted moral minimum, named ‘*kathekon*’ (Greek stoicism), ‘*commune officium*’ (Cicero), ‘*convenientia*’ (Seneca), or ‘propriety’ (Smith) (Waszek 1984).

The idea of the two levels of human conduct resembles the discussion about the expected minimal and perfect standards of role-relevant behaviour. However, there is one fundamental difference residing in my rejection of the unity of virtues which has two important implications. First, on the view I defend, people do not need to develop all the virtues in order to possess and hence express only some, role-relevant virtues. Second, I believe that people can reach the role-relevant level of perfection without reaching all the perfect standards of other social roles they occupy. It follows that someone might be an excellent parent who has acquired role-relevant virtues, such as kindness, patience, etc., without being an excellent manager and a good driver. I do not deny that some extraordinary people can achieve the level of full virtuousness, I only claim that this is not the only way how people can acquire and express virtues.

There are in fact two reasons for rejecting the unity of virtues. First, the idea of the unity of virtues implies the fully virtuous agency which cannot be a good model of virtues for everyone. Given that the fully virtuous agency is meant to be the model of virtues for ordinary people, it fails to accomplish its function.

A model of virtue, as Kimberley Brownlee explicates, can be anything that ‘*exemplifies* certain observable traits, activities, or behaviours’ repeatedly or routinely (Brownlee 2015: 3). It is not the sameness of kinds that matters, but the sameness of action and/or function. Accordingly, although flying birds, to use Brownlee’s examples, can serve as a model for building an aircraft, they cannot model how to play chess. To be a ‘good’ model, these traits and activities need to satisfy a certain level of excellence, as there is no point to in learning how to play chess by studying someone who has never won a game. Nevertheless, the level of excellence, and this is important, must be *relative to* the repeater’s level. Albeit the chess grandmaster is not a good model for beginners, he or she is a good model for upper-intermediates (Brownlee 2015).

The fully virtuous agency cannot be a *good* model of virtues for everyone because it is like the chess grandmaster in the above-mentioned example, whereas many ordinary people are, presumably, at beginner or intermediate levels of virtue development. Consequently, many people are unable to approximate the fully-virtuous model, and hence this model is not, unlike the heuristic model, available to everyone. To keep the idea of virtue acquisition *via* emulating models of virtues, which has been central to many theories of virtues, the meaning of virtuous agency cannot be restricted to the possession of all the cardinal virtues.

The second reason for rejecting the idea of the unity of virtues is that this explanation of virtue appears to conflict with our understanding of personality or character. As mentioned above, character is the unique construct holding together all the dispositions and traits that make us *individual* persons. One’s individuality consists, arguably, in the fact that one has developed certain character excellences as well as some character defects. Imagine that Paul is perfectly kind, emphatic and moderate, yet lacks courage, whereas Andrew is courageous and prudent, but is not kind at all. Both Paul and Andrew have unique personalities originating from their unique proportions of excellences to defects. Although it is convincing to think that the development of one virtue leads to the development of other virtues that are in close proximity to the first acquired virtue, this plausibility need not imply the unity of virtues. In fact, we do not hesitate to aver that both Paul, who is perfectly kind, emphatic and moderate, yet lacks courage,

and Andrew, who is courageous and prudent, but not kind, possess such excellences as well as defects.

Therefore, I propose that we should reject the idea of the unity of virtues as the *only* possible definition of virtuous agency. This does not mean that the fully virtuous agency cannot serve as a good model of virtues for some people, and the two models (the fully virtuous agency and the heuristic model) can presumably coexist with each other. Yet, if we wish to keep the idea of virtue acquisition by emulating models of virtues, we must keep the heuristic model of virtues because it is a good model of virtue for everyone.

This chapter, to conclude, has established the first connections between rights and virtues. I have argued that role-based enabling rights make right-holders more virtuous on condition that they strive for perfecting their social roles. To be more specific, I have demonstrated that these rights have the function of virtue acquisition because they allow their holders to approximate the perfect standard of role-relevant conduct. Since such rights are necessary for the development of role-relevant virtues through perfecting social roles, the heuristic model of virtues complements Snow's Minimal Virtue of the Folks, because it gives us a role-based explication of how people develop virtues through perfecting their social roles.

INTRODUCTION TO PART TWO

In Part One, I have illustrated that rights have a plurality of functions and proposed that one of these functions is to make the right-holder more virtuous. Then, I have argued that at least role-based enabling rights have this function of virtue acquisition.

My argumentation has been based on Wenar's Kind-Desire Theory and Snow's Minimal Virtue of the folk, for those two accounts allow me to connect the concept of a right with the idea of virtue development in the realm of social roles. According to the Kind-Desire Theory (Chapter I.), rights are ascribed to social roles and natural kinds rather than individual beings on the basis of the precise identification of role/kind-based desires. The Minimal Virtue of the Folk (Chapter II.) clarifies, on the cognitive basis, how people can develop virtues through perfecting social roles. Finally, the heuristic model of virtues (Chapter III.) provides another, role-based explanation of this type of virtue acquisition. That is, the heuristic model pinpoints the scope for the development of virtues within the realm of social roles and highlights the necessity of role-based enabling rights for acquiring virtues *via* perfecting social roles. In principle, any development of some role-relevant virtue through perfecting some social role consists in approximating the ideal role model (the heuristic model). To strive for approximating this model, one must attempt to exercise role-based enabling rights to perform one's role-based duties in the way the ideal role model would do. Since role-based enabling rights permit the emulation of such models, these rights are necessary for virtue acquisition through perfecting social roles.

However, not all role-based rights are enabling rights and not all enabling rights must be role-based rights. Some role-based rights are protective rights and some enabling rights might be kind-based rights. Enabling rights, to recall the distinction, *enable* the right-holder to carry out duties, activities and ends (e.g., the police officer's rights to stop and search people, the judge's right to sentence criminals, etc.). These rights are ascribed to social roles and natural kinds in accordance with role/kind-based duties on the basis of the duty derived attributions of desires. Protective rights, on the other hand, *protect* the right-holder's desires that duties, activities and ends are fulfilled by other people. Such

desires are recognised as norms by existing system of norms, and therefore protective rights are assigned to social roles and natural kinds in accordance with the role/kind-normative attributions of desires (see the Kind-Desire Theory in Chapter I.).

Part Two investigates the function of virtue acquisition when it comes to protective rights. To be more specific, I will argue that while some protective rights, namely most children's rights, lead to the development of virtues through protecting children's essential needs, other protective rights, concretely promissory rights and the power-right to promise, function as enabling rights, and therefore their function of virtue acquisition is explained by the heuristic model of virtues.

I concentrate solely on children's rights and promissory rights because these are the paradigmatic counterexamples to the Will Theory and the Interest Theory, respectively. As will be illustrated, Will theorists fail to describe and justify the rights of children for most of these rights are unwaivable rights which do not provide the right-holder with a choice of being waived. The Kind-Desire Theory avoids this issue by pinpointing children's role/kind-based *desires* that certain duties (e.g., duties not to ill-treat children and to care for children) are fulfilled by others. As Wenar (2013) argues, so long as such desires are recognised as norms and those duties are enforced by existing systems of norms, children hold correlative claim-rights. Since Wenar's analysis does not justify rights-ascriptions (i.e., it does not tell us why some children's role/kind-based desires should be recognised as norms and protected by rights), my next task is to elaborate the virtue-based justification of children's rights.

Many Interest theorists, on the other hand, have had difficulty describing and justifying promissory rights. Given that rights, on their account, protect and further the right-holder's interests, any promisee who is, due to carelessness or ignorance, mistaken about his or her interests when accepting the promise is a counterexample to the Interest Theory. Suppose that X accepts Y's promise that ϕ , and that the performance of ϕ makes X worse off. This does not seem to undermine the fact that Y is held under the promissory duty to X that ϕ (Wenar 2008, 2015). The Kind-Desire Theory does not face this issue because promissory

rights are assigned to the role of a promisee in accordance with the role-based desire that promisors keep promises which neither refers to nor depends on individuals' psychological states. The last chapter of this dissertation offers the virtue-based justification of promissory rights and the power-right to promise.

CHAPTER IV. CHILDREN'S RIGHTS

Most normative theories that justify rights-ascriptions to children base this justification on the protection of children's essential needs and well-being or welfare. We commonly believe that children need this protection due to their condition of childhood, usually understood as the condition of vulnerability, incapacity and innocence, which constantly undergoes development and requires support, nurture and love. As David William Archard puts it, 'the modern child is an innocent incompetent who is not but must become the adult' (Archard 2004: 50).

Accordingly, most children's rights are protective rather than enabling rights, because they protect children's (role/kind-based) desires pinpointed by role/kind-normative attributions (see the Kind-Desire Theory in Chapter I. and the distinction between enabling and protective rights in Chapter III.). It follows that the Interest Theory of rights, according to which rights protect and further the right-holder's interests interpreted as well-being or welfare, is one of the most prevailing descriptive as well as justificatory accounts of children's rights. One aim of this chapter is to argue that even though the virtue-based justification of children's rights elaborated here is a complement to the Interest Theory, it does not lose its justificatory force.

As explained in Chapter I., we cannot answer the question of what rights children have unless we justify our different explanations of what children, *qua* children and human beings, desire and why such desires should be protected by rights. Consequently, another aim of this chapter is to elaborate the virtue-based justification of children's rights. I will argue that there are at least three fundamental rights of children which protect children's essential needs (the right not to be harmed, abused and neglected, the right to be nurtured, cared for and loved, and the right to education). This protection, as will be illustrated, secures children's healthy mental and physical development, which, in turn, protects and furthers their capacity for virtue acquisition. In other words, by protecting children's essential needs, the fundamental rights make children more virtuous. I shall also argue that people who have developed and practised virtues are more likely to find happiness (regarded here as a synonym for well-being) throughout

their lives. Therefore, the fundamental rights of children also protect and further children's happiness (well-being).

Some theories of rights do not consider children as holders of rights. I will assert that such theories conflict with the fact and that any critique of some right-ascription to children cannot be derived from the assumption that children are not right-holders. However, one's capacity for holding rights does not always clarify why one ought (not) to have certain rights. Put differently, although people can be ascribed any right, it might be morally wrong to ascribe some rights to some people. Accordingly, my final aim in this chapter is to argue that children lack some role-based rights and that they should not be ascribed certain liberty rights, since such rights are in contradiction with their fundamental rights. Furthermore, I will also explain why adults do not possess the fundamental rights.

To achieve my aims, I start with a short overview of the main theoretical approaches to children's rights. This section should clarify why theories recognising children's rights but not ascribing *all* rights to children are less controversial than other accounts. Secondly, I elaborate the virtue-based justification of the three fundamental rights of children. Thirdly, I explicate why this justificatory account complements the Interest Theory rather than the Will Theory. Finally, I argue that children should not be ascribed certain rights and that adults do not hold the fundamental rights of children.

10. A short overview of the main theoretical standpoints

There are many theoretical approaches to children's rights in the literature. Despite multifarious differences amongst these approaches, they all seem to be united by the attempt to answer two chief questions: (1) *Are children capable of having rights? (Do they qualify as right-holders?)*, and, if they can have rights, (2) *What (sort of) rights do children have?* The two questions imply following possible answers which, as I am about to illustrate, are reflected in the literature:

1. Are children capable of having rights?

1.1. No

1.2. Yes

2. *What (sort of) rights do children have?*

- 2.1. Children have all the rights that adults have.
- 2.2. Children have all the rights that adults have and, on top of that, they have some special rights that adults do not have.
- 2.3. Children have only some rights that adults have.
- 2.4. Children have only some rights that adults have, however they have also some special rights that adults do not have.

Some philosophers (e.g., Hart 1955) have argued that children cannot have rights because they do not qualify as the right-holder. They claim that children lack autonomy and/or rationality or are less capable than adults in other aspects, such as their lack of experience or overall cognitive abilities. In any case, children's incapacity implies that they cannot be (completely) responsible for their actions, and thus they cannot be considered as moral and legal agents. Since moral and legal *agency* is essential for the possession of rights, children have no rights.

The conclusion that children have no rights is rather controversial for two reasons. First, we have a very deep conviction that children have rights. Second, children have been ascribed rights at least since the year 1924, when the Declaration of the Rights of the Child was accepted by the League of Nations. The Declaration was then adopted in an extended form by the United Nations in 1959, which served as the basis for the United Nations Convention on the Rights of the Child thirty years later. Therefore, any theory of rights that does not recognise children as the right-holder seems to conflict with the fact. Obviously, the theorist can argue that despite the fact that children have been assigned rights, they should not have these (perhaps all) rights. However, this argumentation cannot work on the assertion that children are not right-holders due to their lack of the capacity for holding rights. It follows that any relevant criticism of children's rights must see children as right-holders and then defend the claim that children should not have some or even all rights.

On the other hand, many philosophers maintain that children hold rights. For the sake of clarity, let me distinguish between liberty and welfare rights. Liberty rights concern people's choices, such as how and whether to vote, whether to practice a religion and which one, etc. Welfare rights protect people's essential

interests and needs, such as health, privacy, etc. (Archard 2004, 2014), and they have been referred to as protective rights in this dissertation. Accordingly, some scholars argue that children (should) have both liberty and welfare rights, whereas others claim that children (should) be ascribed only welfare rights.

According to libertionists, children ought to be assigned welfare as well as liberty rights, i.e., they should have all the rights that adults have. Libertionism works on the assumption that children are the last oppressed social group deprived of rights in the same way as women and some race minorities used to be (Federle 1993, 1995). This deprivation is grounded in the constructed concept of capacity that has been central to our understanding of the right-holder for centuries (Cohen 1980, Federle 1993, 1995). No libertionist, I believe, would deny that children, especially very young children, are incapable of certain things and actions. Their main aim is to highlight the fact that we define who is the right-holder and that our definitions largely exclude children from the status of a right-holder. Consequently, we must come up with theories of rights that are not based on such definitions, for the only way to liberate children and treat them with the same respect as we treat adults is to give them equal rights.

There are many different explanations of libertionism which differ mainly in theorists' approaches to paternalism when considering children's liberty. Different approaches mirror how much paternalism the theorist is willing to assign to parents (caregivers generally), other adults and to the state *in their relations* with children. For some libertionists, neither parents nor other adults nor the state can ever be justified in *any degree* of paternalism (Federle 1993, 1995).¹⁴ However, this seems controversial too. Nobody, I firmly believe, ought to allow very young children to drink alcohol or chew tobacco because there is a great

¹⁴ As far as I know, there is no philosopher who would claim that children have all the rights adults have and, on top of that, that they have some extra rights. In fact, I can think only of some special welfare rights, such as the right to be nurtured and cared for, the right to be loved, etc. However, these rights are essentially derived from children's special status: their inability to provide for themselves food, shelter, etc. This brings back the concept of capacity into the concept of the right-holder, which is unacceptable for libertionists. Furthermore, anyone who defends this position would also need to explain the relationship between children's liberty rights and the provider's duties to meet such children's needs (interests) correlating with their special (welfare) rights.

chance of poisoning that can harm the child. To let some young child drink alcohol or chew tobacco is without doubt wrong, and therefore *some degree* of paternalism is clearly justified in certain cases. Yet, any acknowledgment of some degree of paternalism must lead to the conclusion that children should not have all the rights (especially some liberty rights) that adults have, which is in fact the disconfirmation of libertarianism.

Since the two above-mentioned approaches towards children's rights (children have no rights and children have all rights) are implausible, the view that children have rights but should not be ascribed all rights must be less questionable. Philosophers defending this standpoint base their argumentations also on children's incapacity, which can be marked out in different ways. The most common way is the age limit stating when someone can qualify as the holder of certain rights. In some Canadian and U.S. jurisdictions, for example, fourteen-year olds can obtain a driving license, but they need to be at least eighteen years old to be legally capable of buying and consuming alcohol and tobacco. The second most widely used way to highlight children's incapacity is to assign them only welfare rights. There are many reasons (not necessarily good ones) for denying children liberty rights. Children's lack of autonomy, as mentioned above, or their poor judgements regarding long-term well-being (preferring sweets to healthy food, playing with friends to going to school, etc.) are amongst the most prominent reasons in theories of children's rights. Many Interest theorists (e.g., MacCormick 1982, Kramer 1998) use either one or both ways to determine what sort of rights children have.

Finally, some philosophers assert that children should not be assigned all the rights that adults hold, however children also possess special rights, grounded in their condition of childhood, which adults do not have. Joel Feinberg (1980) is the best-known defender of this approach. In his work, Feinberg divides rights into three categories: (1) rights held only by adults (mostly liberty rights), (2) rights held by both adults and children (mostly welfare rights and some liberty rights), (3) and rights held only by children (special welfare rights). Such special welfare rights secure that children receive goods they are unable to secure for themselves (e.g., the right to food and shelter), or protect children against ill-treatment (e.g., the right not to be abused and neglected), or satisfy their essential needs

(e.g., the right to be loved) (Feinberg 1980, Archard 2014). I believe that this final approach towards children's rights is correct and I will defend it in the last two sections of this chapter.

11. The virtue-based justification of children's rights

The most important rights of children, special welfare (protective) rights, are grounded in the condition of childhood and protect children's essential needs and well-being. Such protective rights, as will be illustrated, have also other functions. They protect and further children's capacity for virtue acquisition, and hence they make children more virtuous. Those rights also further children's happiness throughout their lives. To highlight their importance, I am going to call them 'fundamental rights'. There are, I propose, three fundamental rights of children: (1) the right not to be harmed, neglected and abused, (2) the right to be nurtured, cared for and loved, and (3) the right to education. The list need not be definite and other rights might be added, however I concentrate only on those three rights here.

The fundamental rights of children are grounded in the condition of childhood. Childhood is often understood as the condition of vulnerability, incapability and innocence, which constantly undergoes development and requires protection, nurturing and love:

'The modern conception of childhood is neither simple nor a straightforwardly coherent one, since it is constituted by different theoretical understandings and cultural representations. The conception is a very modern one inasmuch as literature has treated of childhood for only two hundred years, and science one hundred. Both, in essence, see the child as having a separate nature and inhabiting a separate world. ... In sum, the modern child is an innocent incompetent who is not but must become the adult. The "must" conveys both the necessity of human development and the ideal character of maturity.' (Archard 2004: 49-50)

'Childhood is the time for children to be in school and at play, to grow strong and confident with the love and encouragement of their family and an extended community of caring adults. It is a precious time in

which children should live free from fear, safe from violence and protected from abuse and exploitation. As such, childhood means much more than just the space between birth and the attainment of adulthood. It refers to the state and condition of a child's life, to the quality of those years.' (UNICEF - Childhood Defined 2005)

Furthermore, according to Wenar's Kind-Desire Theory, children are members of both a social (familial) institution and species (humankind). It follows that children have both role-based (social) and kind-based (biological) desires, which might or might not be separated. When I talk about children's essential needs derived from their condition of childhood, I refer to social and biological desires without any further distinguishing. Considering the characteristic features of childhood, I assert that children, *qua* children, desire to be nurtured, cared for, loved, and supported in their development, that is, on their way to become adults.

11.1. Protecting children's essential needs and virtue acquisition

I believe that we all have, though to different degrees, the capacity for virtue acquisition and that this capacity develops throughout our lives. However, I also believe that the most crucial stages of this development occur in childhood. As will be illustrated, unhappy conditions and defects of mental and physical health can limit the range of virtues someone can acquire. Autistic and severely handicapped people are presumably unable to develop many virtues. Despite the fact that the capacity for virtue acquisition is held to different degrees, it is a *human* capacity.

Childhood, as explained, is defined by vulnerability, incapability and innocence. It is a special condition which undergoes *constant development* while transforming children into adults. Consequently, children's essential needs, derived from their condition of childhood, are needs that are vital to this development. To be more precise, their essential needs define what the normal and healthy development is. Therefore, rights that protect children's essential needs also protect and secure children's normal and healthy development. Given that someone's mental and physical health affects that

person's capacity for virtue acquisition, the fundamental rights of children also protect and further their capacity. This section demonstrates how the possession of such children's rights makes the right-holder more virtuous.

There is an enormous amount of empirical data giving us an evidence that our mental and physical health is closely connected to supportive social experiences we receive from close relationships (Mineo 2017). The way we are supported and treated have significant impacts on our mental and physical health right from our birth (Perry 2002, Tarullo 2012, Glaser 2014), and what we experience in very early life has one of the most formative effects on our biological and social development (Perry 2002, Tarullo 2012, Glaser 2014, Narvaez 2015, 2016). No wonder that the relationship between parents (caregivers) and children has been the subject of much research into developmental psychology. This research suggests that there are direct links between the supportive environment and healthy, self-confident, morally and emotionally cultivated individuals (Narvaez 2015, 2016, Thompson 2015).

Any parent-child relationship has arguably some good and bad impacts on the both parties of this relationship. The problem arises when the bad effects start to predominate. Research into child abuse and neglect has clearly shown that a child maltreatment has severe impacts on the victim's psychological, physical, cognitive, and behavioural development. Amongst the most evident consequences are chronic low-esteem, attentional problems, learning disorders, poor peer relations, as well as brain damage (Panel on Research on Child Abuse and Neglect, National Research Council 1993).

The most recent research into brain development has revealed why early abuse and neglect might affect heavily the child's later adjustment. It is a well-known fact that human babies are helpless and immature at birth. They emerge from the womb nine to eighteen months earlier than babies of other mammals, meaning that human babies have approximately 75 percent of the brain left to be developed outside the womb over next twenty years, though most of it is developed by the age of five (Tarullo 2012, Narvaez 2015). This development, as Danya Glaser points out, is also shaped by children's individual experiences:

‘While the sequence of development within the brain is genetically determined, the nature of this development is determined to a considerable extent on the young child’s experiences. The absence of some experiences, such as extreme deprivation during sensitive periods of development may mean that certain functions will not develop. For most functions, the nature of experience will shape brain development. Negative experiences and certain ways of interaction will be incorporated into the brain’s connectivity. While learning and new experiences continue throughout life, and their effects continue to be incorporated into brain structure and functioning, previous patterns cannot be erased, only added on to and more slowly.’ (Glaser 2014: abstract).

Negative experiences, to conclude, that children have while interacting with their parents and other people in early life do have severe impacts on their brain development. Such effects will arguably affect many (perhaps all) other aspects of human development.

Furthermore, young maltreated children tend to display a significant amount of neurobiological stress, whereas children who have experienced a secured attachment to parents appear to be protected from developing the worst effects of the stress response (Perry 2002). Many empirical studies suggest that the child’s experiences interact with the child’s genetic resilience or vulnerability (Perry 2002, Tarullo 2012, Glaser 2014). This conclusion is also supported by ongoing research into epigenetic, the branch of science studying how one’s environment affect one’s gene expression. It is now a well-known fact that genes provide only a blueprint requiring certain experiences for gene expressions to occur (Lussier, Islam, Kobor 2018). For example, rat pups which lack a normal nurturing mother (supportive environment) in the first ten days of life, the period of time when the proper gene expression for controlling anxiety is switched on, may never be able to express this gene. Consequently, whenever such rats face new situations, the situations will cause anxiety for a lifetime (Meaney 2001, 2010).

John Locke once said that at birth the human mind is a *tabula rasa* or blank slate, ready to be written all over by experience. Not only does the research into developmental psychology and neuroscience support Locke’s statement, it has also demonstrated that our experiences go much deeper into us, for they affect the very brain structure as well as gene expressions. In other words, such

experiences do not only write all over our mind, they are inscribed into our physical body too. It shows us how vulnerable and formative children are, as well as how a child ill-treatment and neglect lead to the child's poor physical and mental health, including chronic low-esteem, attentional problems, learning disorders, poor peer relations, and brain damage, to name some of the most evident and detected consequences of a child maltreatment.

It follows that the experience of supportive and loving environments is one of the most essential needs children have, because such experiences are necessary for children's normal and healthy development as *human* beings. Moreover, some developmental psychologists argue that positive experiences and the normal (healthy) development are crucial for the child's moral development. Ross A. Thompson (2015) asserts that even very young children develop a 'pre-moral sensibility', derived from their non-egocentric awareness of the effects of one's conduct on other people's feelings, aims and needs. This pre-moral sensibility is then constantly refined in parent-child interactions into a system of moral values and the child's self-awareness as a moral agent. '[V]irtue...is nurtured in the context of [parent-child] relationships that exemplify, as well as discuss, responsiveness and support' (Thompson 2015: 299). In addition, Darcia Narvaez (2015, 2016) points out, based on her research, that the ways of early caregiving, such as touch frequency, the length of breastfeeding, the amount of given attention, etc., affect the individual's capacity for virtue acquisition. Narvaez also argues that chances of acquiring virtues are significantly improved when one has a good mental and physical health and lives in the supportive environment.

All these empirical studies demonstrating how children's experiences affect their development give us an evidence that children are extremely sensitive to the ways they are treated, and that these ways have impacts on children's capacity for virtue acquisition. It has been asserted that people hold this capacity to different degrees and that people who are mentally and/or physically handicapped are unable to acquire certain virtues. In other words, there are links between the development of our capacity for virtue acquisition and our mental and physical development. Accordingly, it seems that rights which protect children's essential needs also protect and further their capacity to acquire virtues.

Considering that the fundamental rights of children are grounded in the condition of childhood, it follows that those rights are justified by their protection of children's normal (healthy) mental, physical and moral development. This implies that children have rights to experience the supportive and loving environment as well as rights against negative experiences. Since negative experiences are mainly caused by a child ill-treatment understood in terms of 'harm', 'abuse' and 'neglect', all children have *the fundamental right not to be harmed, abused and neglected*. Given that positive experiences are captured (though not exhaustively) by terms of 'nurture', 'care' and 'love', all children have *the fundamental right to be nurtured, cared for, and loved*.

Furthermore, the child's need for the supportive environment is not restricted only to one's nuclear family, but to the society as whole. One of the most important social institutions that play an essential role in the transformation of children into adults is an education system, and I believe that each society has the moral duty to provide *all* its children with education. Accordingly, all children have *the fundamental right to education*. Education socialises children and equip them with an essential knowledge and skills guiding children through their lives. It is meant to transform children into functioning (ideally well-functioning) members of the society by transmitting basic social norms, values and practical skills. To function well as a member of the society means to occupy social roles and refrain from conducting negative social deviance. It follows that education provide children with the common knowledge of social roles. Given that virtues are developed by perfecting social roles, education has also direct impacts on children's capacity for virtue acquisition.

To sum up, the three fundamental rights of children have several functions. They protect children's essential needs, which, as I have argued, implies that they also secure children's healthy mental, physical and moral development. The protection of this healthy development justifies the existence of such rights, and the function of virtue acquisition is an important part of this justification. Put differently, one of the main reasons why children should not have negative experiences is that such experiences restrict the capacity for virtue acquisition, and one of the main reasons why children must experience the supportive and loving environment is that these experiences further that capacity. As I am about

to demonstrate, the function of virtue acquisition in the case of children's rights has also direct impacts on children's ability to find happiness throughout their lives.

11.2. Virtues and happiness

There is a common belief that children's rights protect and further children's well-being or welfare. I take the terms 'well-being' and 'welfare' to be synonymous with happiness or flourishing (terms widely used in virtue ethics). In this section, I argue that by protecting and furthering the capacity for virtue acquisition, the fundamental rights of children also protect and further children's happiness throughout their lives. I have no intention to attempt to define happiness, since it is beyond the scope of this dissertation to do so. However, I will demonstrate that there are direct links between happiness and virtues.

Most virtue ethicists since Aristotle have argued that virtues are the key to happiness. To illustrate why virtues are so essential to our flourishing, I highlight three aspects of human life that relate to happiness and argue that the way people approach such aspects as well as their success within these aspects depend on virtues and vices those individuals have developed.

Good interpersonal relationships. People are happy when they have good interpersonal relationships and our ability to succeed in establishing and maintaining good ties is the key to our happiness. For nearly 80 years, researchers from Harvard University have studied the lives of the same group of men, recording details about their physical and mental health, their employment, families and friendships every two years. The aim of this research was to provide insight into what factors led to a good life. After analysing an enormous amount of data, the research has revealed that close relationships, more than anything else, are what keep people happy throughout their lives. 'Those ties protect people from life's discontents, help to delay mental and physical decline, and are better predictors of long and happy lives than social class, IQ, or even genes' (Mineo 2017). To have good interpersonal relationships, we must put effort into

maintaining them, because all good relationships develop over a period of long time and demand a great amount of care. There is no doubt that people who have developed honesty, kindness, fairness, and care are more successful in establishing and maintaining good ties than those who are notoriously dishonest, unkind, unfair, and uncaring.

Functioning well as a member of the society. Human beings are social animals, and therefore people tend to be happy when they thrive in the society or become its valuable members. As Dan P. McAdams (2015) points out, our survival and reproduction have always depended on success in social life consisting of *social acceptance* and *social status*.

‘This is why social exclusion and loss of status are among the most painful experiences human being can know today, for being excluded from the group, or downgraded in status, has throughout evolutionary history often led to death, or at best a significant decline in reproductive fitness.’ (McAdams 2015: 310)

Both social acceptance and social status, as McAdams argues, are influenced by *social reputation*, constructed in accordance with one’s character as perceived by others. Adjectives, such as trustworthy, kind, unfriendly, etc., are used daily to describe and appraise other members of the society. Such descriptions and assessments are meant to help us to decide whether or not we should establish or maintain already established relationships and interactions with those people. Since any human society requires some amount of cooperation and organisation, it seems that social reputation affects people’s ability to interact with others. To thrive in a society, one must succeed in creating social networks that readily circulate one’s social reputation and constantly create new social opportunities. Virtues are essential to our capability of earning a good social reputation, and therefore they are also necessary for functioning well as a member of the society.

Construction of individual life stories. As we age, we are more and more inclined to reflect on how we have lived. One important implication of this reflection, as McAdams (2015) illustrates, is our construction of individual life stories. According to McAdams, creating life stories gives us broader and more meaningful perspectives on our lives. A life story constitutes an individual’s narrative identity connecting the past self with the present self in order to guide

through the future self. Furthermore, such stories are psychological as well as moral projects, for they mirror our understanding of the good and the truth (McAdams 2015). I believe that people who are satisfied with their own, more truthful stories tend to be happier than those who are either unsatisfied or have fabricated their stories to their satisfaction. I also believe that virtues play an important role in constructing more truthful stories. Virtues, as defined, are character traits and qualities that make us better people in general. It follows that virtues enable us to remain consistent through constantly changing environments. In other words, virtues provide a personal *integrity* which determines, to a large degree, the ways we cope with difficult situations and moral dilemmas encountered throughout our lives. When constructing individual life stories, virtues help us to find meaningful and more integral contents of our lives. Consequently, virtues secure more authentic constructions of life stories, and hence lead to happiness.

To conclude, the above-mentioned three aspects of human life (*good interpersonal relationships, being a valuable member of society, and constructing own life stories*) are the essential sources of human happiness. Different people approach these aspects differently and attach them different values. Despite these differences, whether or not people thrive in such aspects depends on their possession of virtues. Thus, virtues are essential to happiness. Given that the fundamental rights of children protect and further children's capacity for virtue acquisition, such rights also protect and further children's happiness throughout their lives by improving the chances of developing as many virtues as possible (and perhaps reaching the fully virtuous agency).

12. The virtue-based justification and the Interest Theory

The upshot of the previous section is that there are at least three fundamental rights of children, which are grounded in the condition of childhood, and that these rights have a plurality of functions. They protect children's essential needs in order to secure their normal and healthy development. The fundamental rights

of children also protect and further children's capacity for virtue acquisition, which, in turn, furthers their happiness throughout their lives.

All these functions can be explained by the claim that children's rights protect and further children's interests (well-being). Consequently, the virtue-based justification elaborated here is a complement to the Interest Theory of rights. This does not imply that I must accept the Interest Theory as the *only* descriptive and justificatory account here as well as in other cases. As Wenar argues, the Kind-Desire Theory, which is used as the descriptive account of rights in this dissertation, is compatible with the Interest Theory, yet does not face its counterexamples. For the term 'desire' embraces the term 'interest' but the latter is understood as the right-holder's *well-being* only when it comes to children's rights and human and animal rights:

'Yet this is the direction of fit only for this new class of right-holders, not for most cases. ... The mistake of the Interest Theory is to take the analysis of these latecomers (detheologized humans, children, animals, etc.) as its paradigm, and to attempt to explain rights-ascriptions beyond these cases with the independent value of well-being.' (Wenar 2013: 227)

Furthermore, the virtue-based justification of children's rights does not conflict with the justificatory reasons given by the Interest theorist. One possible difference between those two justifications lies in my interpretation of essential needs as needs that are necessary for the normal and healthy development, and of well-being as happiness or flourishing. Another difference can be found in the fact that rights, on my account, have several functions, and therefore there might be more than only one justificatory reason for rights-ascriptions. Nevertheless, the point is that the function of virtue acquisition in the case of children's rights is included in the function of protecting and furthering the right-holder's interests considered as well-being. Although the virtue-based justification complements the Interest Theory of rights, it does not lose its justificatory force.

13. The Will Theory of children's rights

As explained in Chapter I., there is another widely accepted theory of rights, the Will Theory. The virtue-based justification of children's rights is not a complement to the Will Theory because its conceptual realm does not allow us to describe children's rights. More precisely, Will theorists have had difficulty describing and justifying children's rights for a long time. Its two most prominent defenders, H. L. A. Hart and Hillel Steiner, have attempted to resolve this problem in order to vindicate the Will Theory. Yet, I argue in this section that they have failed to do so, and therefore the Will Theory still faces the same issue.

According to Hart (1983) and Steiner (1998), the right-holder is 'a small-scale sovereign' who is owed the duty consisting either in performing some action (a duty to do ϕ) or refraining from some action (a duty not to do ϕ). Such a small-scale sovereign gains *control* over the duty of another due to his/her ability to decide whether the performance of that duty will be waived or enforced. Based on Hohfeldian analysis, this power is linked with *liberty (privilege)*, or more precisely with *paired-privilege*, which explains the right-holder's *ability to decide* or *choose* to waive or enforce the fulfilment of the duty. (Note that the Will Theory is also known as the Choice Theory.) As stated before, X has a paired-privilege if and only if X has both *no duty not to do ϕ* (in this case, to waive or enforce the duty) and *no duty to ϕ* (waive or enforce the duty). In other words, rights give their holders control over the duty of another, which resides in the right-holder's discretion (choices), and they protect these choices, that is, the right-holder's liberty.

For Hart (1955), the right-holder's liberty relates essentially to one's autonomy. There is, on Hart's account, only one natural (moral) right, 'the equal right to all men to be free' (Hart 1955: 175), which serves as the fundamental right from which all other rights, 'derivative rights', are derived. Though Hart speaks of the *equal* right to *all* men to be free, not everyone holds this fundamental right. To qualify as its holder, one must have *the capacity for autonomous choices* or autonomous agency. It follows that beings who lack this capacity cannot hold the fundamental right. Since all other rights are derivative rights, it also implies that such beings have no rights at all. Accordingly, children,

mentally handicapped people, the comatose, the dead as well as the future generations and animals are excluded from the status of a right-holder, and hence deprived of rights. Hart asserts that although people have a moral duty not to ill-treat such non-autonomous beings, this duty does not correlate with any right, and we should not use the term 'right' in its proper meaning here (Hart 1955: 181). As will be explained later, Hart (1983) eventually reviewed and changed his view on rights-ascriptions to non-autonomous beings.

However, the problem of describing children's rights arises even if we do not place emphasis on the concept of autonomy and focus only on the right-holder's control over the duty of another. Since most children's rights are welfare (protective) rights, these rights cannot be waived. Think of the right not to be harmed, neglected and abused. Children can neither release other people from their duty not to ill-treat them, nor to enforce the performance of that duty. Consequently, children seem to lack the control over the duty of another. There is another, yet related issue for the Will Theory called the issue of unwaivable rights and duties. A typical example of an unwaivable right is the citizen's right not to be assaulted. In most modern states, citizens are protected by the criminal law, imposing the duty not to assault on all citizens. Yet, the criminal law does not allow citizens to waive their right. That is, citizens also seem to lack the control over the duty of another. Given that the only function of rights is to provide the right-holder with this control, any consistent advocate of the Will Theory must conclude that citizens do not have the right not to be assaulted and that children do not hold the right not to be harmed, neglected and abused. Such conclusions are without doubt in conflict with the fact, for both citizens and children have been assigned such rights in many states all over the world.

Both Hart (1983) and Steiner (1998, 2008) have endeavoured to explicate these problematic cases in order to justify the Will Theory. As mentioned, Hart eventually changed his view and claimed that non-autonomous beings can hold rights if and only if the control over correlative duties is exercised on their behalf by appointed representatives. This, I believe, is unconvincing. It has been asserted that most children's rights (as well as the rights of mentally handicapped people, the comatose, etc.) are welfare (protective) rights that exist to protect their essential needs and well-being. This protection often consists in securing certain

types of care. One characteristic feature of such welfare rights is that the right-holder is usually unable to waive these rights securing some required care and protection. It must follow that neither children, nor their appointed representatives have the control over duties which correlate with most rights of children. To solve the issue, Hart must resolve the problem of unwaivable rights and duties too. Since he asserts that unwaivable rights and duties are rare cases which cannot be explained by the Will Theory (Hart 1983: 188-193), Hart fails to ascribe rights to children.

Hillel Steiner (1998) disagrees with Hart and claim that his explanation of the Will Theory avoids the both problems. His solution lies in locating rights in the so-called ‘power-possessors’ or ‘superior state officials’, who hold the actual authority (power) to waive and enforce duties in those problematic cases. In other words, the rights of children are not held by children, but by the relevant state officials. The same applies to citizens’ right not to be assaulted. The law, as Steiner points out, always empowers some people within the hierarchical power-structure of the state to be capable of waiving or enforcing these seemingly unwaivable rights. This implies, Steiner concludes, that there are in fact no unwaivable rights and duties (Steiner 1998: 251-262).¹⁵

Wenar has questioned Steiner’s solution for it conflicts with our ordinary understanding of rights (Wenar 2008). To see its implausibility, we need to introduce the distinction between directed and undirected duties. Directed duties are duties that one person owes to another person, who would be wronged if the duty were violated. On the other hand, violating undirected duties is wrong, but it does not wrong anyone in particular (Cruft 2013, May 2015). If we admit that there is a moral duty not to ill-treat children (as Hart does), we must be inclined to think that this duty is *directed towards* children. Moreover, we commonly believe that whenever someone violates the directed duty not to ill-treat children, it is some particular child *who is wronged*. Accordingly, the connection between

¹⁵ It is important to highlight the difference between Hart’s appointed representatives and Steiner’s power-possessors, who can also be seen as appointed representatives. In Hart’s case, children, not appointed representatives, are holders of children’s rights, whereas on Steiner’s account these rights are held by power-possessors.

the duty not to ill-treat children and children's right not to be ill-treated seems to be lost when the right is held by someone else than children.

To demonstrate the point, imagine a moral community (a system of moral norms) that has power to decide what is morally right and wrong. The community ascribes moral rights and duties to its members in accordance with its decisions, and it has decided that all its members have the duty not to ill-treat children. If Steiner is right, the correlative right that children are not ill-treated is held by the community (i.e., its relevant power-possessors), since only the community has the actual control over the duty. That is, only the community can either cancel the duty or modify any of its details (e.g., that the duty is imposed only on *some* instead of all members of the community). Even though the community is the actual power-possessor here, we do not think that it is the community, not some particular child, that is wronged by violating the duty not to ill-treat children.

This holds true for the directed duty not to assault fellow citizens as well, for we believe that any violation of this duty wrongs some particular citizen, not the community (or the institution of law). Therefore, I agree with Wenar's assertion that Steiner's solution contradicts an ordinary understanding of rights. Will theorists, to conclude, are unable to describe (not to mention justify) children's rights, and this inability stems from the assumption that rights have only one function consisting in providing the right-holder with the control over the duty of another. Therefore, the only way how the Will theorist can overcome the issue is to admit that rights have more than one function.

14. Should children be assigned all rights?

Children's rights, as argued, are grounded in children's condition of childhood, seen as the condition of vulnerability, incapacity and innocence, constantly undergoing development and requiring protection, nurture and love. Given this understanding of childhood, many adults have somehow ambiguous feelings about ascribing certain rights to children.

What amount of liberty, we frequently ask, should children be given? There is no doubt that providing children with a greater amount of liberty is overall a good thing to do, since they might feel more respected and thereby more equal. Furthermore, they may perhaps develop certain qualities that go hand in hand with liberty, such as moderation and accountability. On the other hand, it is equally obvious that too much liberty can and often does harm children (especially very young children). Consequently, we tend to believe that children must be prevented from doing things that would harm them. In this section, I clarify why children do not hold certain role-based rights and why they should not be ascribed some liberty rights. If one of the main functions of rights is to make the right-holder more virtuous, and considering that children possess the capacity for virtue acquisition, why should any right be denied to children? Would children not become more virtuous if they were given a greater amount of liberty and could occupy more social roles?

Consider children's inability to occupy certain social roles first. As explained in Chapter I., rights are ascribed to social roles. It follows that people's capacity to hold such rights depends on their ability to occupy these social roles. Whether or not someone can occupy a social role is contingent on existing limitations that determine who is able to occupy that role. There are many different types of limitations, such as natural limitations (including physical and mental incapacities), cultural and national limitations, as well as economic and legal limitations. Imagine, for instance, people who faint from seeing blood. Such people are naturally unable to carry out the task of taking samples of blood for blood tests. Think also about people who are forced to immigrate to other countries and, as a result of their immigration, are denied some political roles and role-based rights because of their cultural and/or national background.

Consequently, Brennan and Nogge (1998) assert that there is nothing controversial about the statement that children do not hold all the role-based rights, since adults do not have equal role-based rights either. Doctors, for instance, have rights that their patients do not possess, and only judges have the right to sentence criminals. When it comes to children, their inability to occupy social roles is derived especially from their physical and mental incapacities, as well as from the age limit in the society and their lack of knowledge and/or

training required by such social roles. A child who cannot speak, write and read can be hardly asked to sign a contract and, therefore, be held under contractual duties. The point is that the unequal distribution of role-based rights between children and adults, as well as amongst different adults, is one essential aspect of our reality of social roles.

Not only do children lack some role-based rights, they, I believe, should be denied certain liberty rights too. As Archard (2014) explains, most liberty rights, such as rights to marry, to have sex, whether to practise religion and which one, etc., are derived from the human right of self-determination. Since children are not commonly seen as holders of those liberty rights, it seems that they do not possess the human right of self-determination (Archard 2014). However, there is (at least) one essential liberty right derived from this human right, namely the right to choose a career path, which is less controversial when considering its ascription to children. I am inclined to think that many people would disapprove of the fact that some child has been intransigently forced to sacrifice other activities the child favours for some one-way career path, such as becoming professional athlete or musician. Does it mean that children have the human right of self-determination after all?

Given our ambiguous feelings about children's liberty mentioned above, the answer might be that children hold this human right only *partially*. We have, as Brennan and Noggle (1998) argue, two very deep convictions which form our understanding of children's moral status: that children can be legitimately prevented from doing certain things, and that parents can legitimately exercise limited but significant discretion in raising children (Brennan and Noggle 1998: 2-5). This understanding of children's moral status is compatible with both our view of childhood and the assertion that children partially hold the human right of self-determination.

This partial possession means that the child is ascribed only such liberty rights that do not conflict with other rights of children. More precisely, any liberty right that conflicts with one or more fundamental rights of children ought not to be assigned to children. It follows that children should have only those liberty rights which are supported by or compatible with one or more such fundamental

rights. In other words, the fundamental rights of children determine which things are good (right) and bad (wrong) for children, for they protect their essential needs. Such needs are norms embedded in the role of a child pinpointing children's (role-based) desires which ought to be protected by the fundamental rights of children. To give an example, I asserted that anyone who lets very young children drink alcohol or chew tobacco wrongs them for there is a great chance of poisoning (harm). Accordingly, anyone who harms a child by doing so also violates that child's fundamental right not to be harmed. It follows that children should not be assigned liberty to drink and eat anything they get their hands on, and the justification of this denial is grounded in the child's fundamental right not to be harmed.

There is no doubt that each child is different and that there should be some degree of flexibility when ascribing liberty rights to children. In many cases, such ascriptions depend on parents who possess a limited but significant right to discretion in raising children.¹⁶ As Brennan and Noggle (1998) argue, the relationship between parents' rights and children's rights is complex and often results in conflicts. One of the most striking conflicts lies in the clash of the parent's right to make choices concerning the child in general and the child's right of self-determination. This conflict emerges from conflicting views of which things are good and which bad for children.

To decide such conflicts, Brennan and Noggle suggest employing the idea of threshold rights, developed mainly by J. J. Thomson (1990). Threshold rights, on Brennan and Noggle's account, are rights that can be permissibly infringed when they conflict with some stronger right and/or when their infringement causes 'a large enough benefit'. I adopt their solution for the thresholding nature of rights explains when parents are justified in ascribing or refusing to ascribe liberty rights to children. First of all, it needs to be stressed that nobody can ever be justified in infringing the fundamental rights of children, and hence the thresholding nature concerns only children's liberty rights. This implies that any liberty right which is compatible with one or more fundamental rights of children

¹⁶ The state, on the other hand, usually protects children's fundamental rights, as well as regulates the age limits for those liberty rights parents have no power to ascribe to their children themselves.

is always the stronger right when conflicting with some right(s) of parents. Put differently, parents are not justified in rejecting to ascribe such a liberty right to children (i.e., in overriding children's right of self-determination). On the other hand, whenever some liberty rights conflict with one or more fundamental rights of children, parents are justified in infringing children's right of self-determination by denying children these rights. Therefore, the infringement of children's right of self-determination can be only justified if it is supported by at least one fundamental right of children.

Imagine two children, Joseph and Judith, who both live in the society providing free and *optional* education and grow up in families orientated to a family business. Unlike Judith, Joseph is not interested in education and wishes to help his parents with the family business as soon as possible. However, his parents value education more than anything else and order him to go to school. Despite Judith's desire to study, her parents decide that she will not go to school for they are in desperate need of her help in the family business. In both cases, the parents have infringed Joseph's and Judith's right of self-determination. Yet, only Joseph's parents are justified in overriding it because their right to make choices involving Joseph is supported by the fundamental right to education, and hence the parent's hold the stronger right in the conflict. Judith's parents, on the other hand, have the weaker right since it is Judith's right of self-determination that is directly backed up by the fundamental right to education. Thus, Judith's parents violate her right when failing to assign her the liberty right to choose a career path.

To sum up, we have ambiguous feelings about ascribing certain rights to children which originate from our understanding of the condition of childhood. On the one hand, we think that children should be provided with liberty, which manifests our respect for their individualities and capacity to develop personhood. On the other hand, we have a deep conviction that too much liberty can wrong children precisely because of their vulnerability, incapacity and innocence. In most cases, liberty rights are ascribed to children by their parents holding the right to significant deliberation in raising children. In other words, how much liberty some child has depends on the amount of liberty the parents are willing to give the child. This, as I have argued, does not mean that parents are always

justified in depriving children of certain liberty rights. To be justified in overriding the child's right of self-determination in the conflict of rights, the parent's right to deliberation in raising the child must be supported by the child's one or more fundamental rights. Since children's right of self-determination can be justifiably infringed, they hold this right only partially. It follows that all liberty rights, unlike the fundamental rights, are threshold rights when it comes to children.

Considering that liberty rights should be assigned in accordance with the fundamental rights which protect and further children's capacity for virtue acquisition, it seems plausible to assume that any ascribed liberty right should also lead to the development of some virtues. As stated above, with a greater amount of liberty might well come accountability and perhaps moderation. This, in turn, might also question some socially constructed limitations preventing children from occupying certain roles. With more social roles come also more role-based rights and duties, that is, more opportunities to develop virtues through perfecting such roles are opening up to children.

15. Adults and the fundamental rights of children

I have argued that children have at least three fundamental rights, the right not to be harmed, neglected and abused, the right to be nurtured, cared for and loved, and the right to education. I have also argued that children do not hold certain rights, namely some role-based rights and some liberty rights, which are held by adults (though not necessarily by all adults). In this last section, I explain why adults do not possess the fundamental rights of children, which, in turn, vindicates Feinberg's division of rights into three categories (rights held only by adults, rights held by both adults and children, and rights held solely by children).

The fundamental rights of children, as have been demonstrated, are grounded in the condition of childhood and have several functions. They protect children's essential needs, and this protection secures their healthy mental and physical development. By securing this development, the rights also protect and further children's capacity for virtue acquisition and thereby make children more

virtuous. Since people who have acquired virtues are more likely to find happiness throughout their lives, the fundamental rights of children also further their happiness.

Adults do not hold such fundamental rights for they are not in the state of childhood anymore. Consider the right not to be harmed, abused and neglected. Adults do not hold this fundamental right because it is replaced by other civil and criminal rights that protect adults against various forms of ill-treatment (e.g., the right not to be assaulted).

Furthermore, the right to be nurtured, cared for and loved protect needs that cease to exist in adulthood. For any adult (except for those with special needs) should be able to take care of him/herself, and no adult needs to have the right to be loved, since other people's feelings and emotions must be, presumably, deserved in adulthood.

Finally, the right to education raises difficult questions about higher education. Such questions are not the subject of this dissertation, and hence I merely propose some answers without justification. Given that one of the main functions of education is to transform children into functioning members of the society, I believe that there can be drawn a following distinction between children and adults in their relation to education: while *all* children *ought to* be educated, only *some* adults *can* be educated. This distinction should clarify why the right to education is *essential* for children not for adults. The state (community), I maintain, has the moral duty to provide all its children with education. If the state (community) is wealthy enough, then it should also provide adults who are interested in higher education or requalification with opportunities to study and retrain. Nevertheless, it is public (free) education for all children, not public higher education, that must be of primary importance in each and every state.

Therefore, the three fundamental rights of children are held solely by children, for they protect *children's* essential needs derived from the conditions of childhood. In adulthood, such essential needs either cease to exist or are protected by civil and criminal rights. Thus, Feinberg's division of rights into three categories is correct.

The chapter has vindicated three main assumptions: (1) that children's rights (an important instance of a protective right) have the function of virtue acquisition, (2) that the virtue-based justification of children's rights is a complement to the Interest Theory, and (3) that there are some rights that should not be ascribed to children. In other words, I have argued that the best way to approach children's rights is to endeavour to find out the best balance between children's vulnerability and their liberty, and that this balance can be perhaps attained by the virtue-based account which combines the need for protection with the idea of development.

CHAPTER V. PROMISSORY RIGHTS

Many people believe that in normal circumstances promises *ought to* be kept. Put differently, they believe that promises impose obligations or duties on those who make promises. One common explanation of this belief, which I accept here without any further justification, is that people can change their normative circumstances, and that promises are amongst the most eminent implements of this ability.

There are also other explanations of why promises are binding. Conventionalism and an expectation theory are the other two best-known accounts of promising. According to conventionalism (e.g., Rawls 1955), there is the rule-based practice of promising recognised as a social convention or an institution. This convention (institution) is both useful and just, and people who share it benefit from its existence. Consequently, promises impose duties for people have the duty not to ‘free-ride’ on the convention (i.e., to make but not keep promises) (Rawls 1971). It follows that without this rule-based practice, there would be no duties to keep promises. Expectationalists (MacCormick 1972, Scanlon 1990, Thomson 1990), on the other hand, argue that promises ought to be kept because they create trust (expectations or beliefs) in promisees, and any unjustified promise-breaking wrongs the promisee’s trust.¹⁷

Both explanations face certain problems. Any conventionalist must clarify why someone who breaks the promise wrongs the convention instead of the promisee, because we have a deep conviction that any unjustified promise-breaking wrongs, first and foremost, the promisee (Habib 2018). Any expectationalist needs to explicate why promisors are held under promissory duties even when promisees do not expect them to keep their promises (Shiffrin 2008). These problems are evaded by accepting the power-based theory of promising. As will be illustrated, any unjustified promise-breaking wrongs the

¹⁷ For a detailed explanation of different approaches towards promising, see, e.g., (Shiffrin 2008) and (Habib 2018).

promisee, and even though promises do, besides other things, create expectations in promisees, promisors have promissory duties regardless of such expectations.

The main aim of this chapter is to illustrate how the power-right to promise and promissory rights make the right-holder more virtuous. I argue that although these rights are essentially protective rights, they behave like role-based enabling rights when it comes to their function of virtue acquisition. For both the power-right to promise and promissory rights define (at least partially) what virtues are and allow their holders to develop such virtues as well as express them in action. It follows that people who hold and exercise these rights can develop virtues, namely honesty and fairness, by approximating the heuristic model of virtues. I argue that while some people tend to perfect indirectly the roles of a promisor and a promisee *via* perfecting other social roles, others are often forced to the direct perfection by two normative consequences which affect the possession of the power-right to promise and promissory rights. In either case, the virtues of honesty and fairness are developed by perfecting social roles, and this perfection is made possible because of the power-right to promise and promissory rights.

To elaborate this virtue-based justification, I start with an explanation of how promissory rights and duties originate from the capacity to change normative circumstances. Then, I propose that the practice of promising have more than only one function and that the several-functions approach seems to capture the whole scope of promising. Those functions also highlight the importance of honesty and fairness in promising. Furthermore, I draw a line between correct exercises and misuses of the power-right to promise and promissory rights. Any correct exercise, I assert, consists in acting in accordance with at least the minimal standards of honesty and fairness, and any misuse manifests the failure to reach these minimal standards. It follows that we have the moral duty to reach such minimal standards whenever we participate in the practice of promising. The final section of this chapter explicates the function of virtue acquisition.

Before that, it should be stressed that I am concerned with the role of a promisor only as the holder of the power-right to promise, not as the bearer of the promissory duty. There are two reasons for this omission. First, the dissertation focuses on rights and their function of virtue acquisition, not on duties

(though the two cannot be separated when considering primarily claim-rights). Second, the role of a promisor contains the role-based duty to keep promises. This implies that people who make promises can use any rights they hold to perform their duties, as well as to perfect the role of a promisor (as the duty-bearer). Although we do not know what rights each individual promisor holds, the development of virtues is explicated by the heuristic model of virtues, provided that such individuals strive for perfecting the role of a promisor understood as the duty-bearer. The power-right to promise, on the other hand, is ascribed to humankind (the natural kind) in accordance with the kind-based desire to be able to change the normative landscape. Consequently, the function of virtue acquisition seems less obvious and therefore deserves our attention here.

16. The power to change normative circumstances

People believe that they can change their normative circumstances when interacting with others. In principle, these circumstances can be altered by (i) creating new rights and duties, (ii) transferring existing rights and duties, and by (iii) cancelling existing rights and duties. As explained in Chapter I., the ability to create, transfer and annul rights and duties comes from the possession of power-rights.

Therefore, the capacity for changing the normative landscape is the power-right. One typical example of this power-right is consent. As Shiffrin (2008) points out, to give you consent to enter my house, you are granted the right to enter the house, meaning that you have obtained a permission to conduct an action which you would normally have no right to do. In other words, through the expression of the consent, I have changed the normative circumstances of our relationships, for this expression has created a new right (your right to enter my house) as well as new duties (my duty not to complain about your entering) (Shiffrin 2008).

In most cases, people hold the power-right to change normative circumstances for it is part of some molecular rights. Consider property rights. The fact that I own a laptop allows me to give you my permission to use the laptop

(consent). Furthermore, it enables me to make a promise that as soon as my new laptop arrives, I give you my old laptop for free. Both consent and promise are amongst the most prominent instances of the power-right to change normative circumstances. However, there is one important difference between consent and promise. Unlike consent providing others with permissions to φ , promise obligates other people to φ (φ refers to *doing some actions*, or *refraining from doing some actions*, or *being in certain states*). The fact that I gave you my consent to enter my house while I am at work does not obligate you to enter the house. Suppose now that you promised me to bring some important paperwork from my home to the office this afternoon. I gave you the keys (manifesting my consent that you can enter the house) and instructions where the paperwork should be found. In this case, you are not only permitted to enter the house, you are obligated to go there, take the paperwork and bring it to the office.

There has been much debate about how promises come into being. Some philosophers (e.g., Schneewind 1966, Thomson 1990) argue that there is no binding promise unless the promisee *receives* (*understands*) and *accepts* the promisor's offer to change normative circumstances by obligating him/herself to keep the promise. Others (e.g., Shiffrin 2008) disagree and claim that the prerequisite of acceptance is an excessively demanding condition. Accordingly, any offer which is not explicitly rejected succeeds in creating a promissory duty. The explanation of why promises impose duties on promisors offered here is compatible with both views and can be defined as follows:

1. X has a power-right to change normative circumstances; thus, X can make promises.
2. X promises Y to φ , and Y does not reject the promise.¹⁸
3. By promising Y to φ , X offers to bind him/herself to Y to φ .
4. By not rejecting the promise, Y gains a promissory right that X φ .
5. Therefore, X is obligated to Y to φ , meaning that X has a promissory duty to φ .
6. X's promissory duty is owed to Y; hence it is a directed duty.
7. Failing to fulfil the directed duty to φ , X violates Y's promissory rights.

¹⁸ Though the definition is compatible with both views of when promises become obligatory, I use only the 'do-not-reject' views to describe the act of promising here for the sake of clarity in my argumentation.

8. Thus, given the nature of directed duties, to violate some promissory right is to wrong a particular promisee.

This definition implies that both promissory rights and duties result from the power-right to promise. Moreover, it evades the two above-mentioned problems which challenge conventionalism and the expectation theory. For any unjustified promise-breaking wrongs the promisee since it violates his or her promissory right, and so long as the promisee does not explicitly reject the promise, the promissory duty is created and exists irrespective of created expectations in promisees.

17. The function(s) of promising

Most philosophers assume that the practice of promising has only one function, or one essential function, which explains and thereby justifies its existence. Joseph Raz, for instance, argues that the practice of promising exists because it creates special bonds between people, and that people desire to have the ability to create such bonds (Raz 1982, 1988). Shiffrin (2008) is more specific and asserts that promises are essential to good relationships because they restore equality between two parties. David Owens (2006, 2012), to give another example, claims that the main function of promising is to satisfy our 'authority interests', and that the practice of promising exists due to our desire to have the deliberative control over the promissory duty of another gained from the possession of promissory rights. Furthermore, most expectationalists argue that the essential function of promising is to create expectations on which the other party can rely (MacCormick 1972, Thomson 1990), whereas most conventionalists claim that promising exists because it has proved to be the best institutional solution to the human need for cooperation and interaction (Rawls 1971).

Contrary to the assumption that there is only one, or one essential, function of promising, I propose that the practice of promising, like rights, has several more or less compatible functions, and that these functions, taken together, explicate promising in a less fractured way. However, I do not attempt to justify the several-functions thesis here. My only task is to list the most apparent functions of promising, which, in turn, should help me to highlight the importance of honesty

and fairness in the practice of promising. Since I presuppose the several-functions approach, I do not need to choose and argue for only one of those possible and plausible functions of promising.

There is no doubt that promises enable us to establish, maintain and re-establish special moral bonds *within* our relationships. For promises, as Shiffrin (2008) illustrates, restore and secure equality between two parties in such relationships. If the parties were unable to make and accept promises, they would lack certitudes that some promised states of the world happen in the future. This would have unfavourable impacts on their approaches towards the relationship itself. Thus, promises are essential to morally valuable and sustainable relationships (Shiffrin 2008), and the function of creating and maintaining special moral bonds is one of the most important functions of promising.

Yet, one party cannot have certitudes that some promised state of the world will happen unless the party believes that the other party keeps the promise. Accordingly, it appears that the whole scope of promising cannot be fully captured unless we mention its ability to create expectations. Thomson (1990) argues that whenever X makes the offer to bind him/herself to Y to φ , X is asserting the proposition containing information on X's willingness to be bound to Y to φ . In so doing, X invites Y to *rely on* the truth of the proposition. People, I believe, intend to persuade others of the truth of such asserted proposition whilst making promises. For any offer to be bound that φ is true (i.e., that the promise is kept) is meant to provide others with a good reason to *believe* that some promised state of the world is either true in the future, or that the promisor will do whatever s/he can to minimise the risk of its untruth. Therefore, creating expectations (beliefs or trust) in promisees is another fundamental function of promising, which complements the function of creating and maintaining special moral bonds. Indeed, we can have hardly morally valuable and sustainable relationships without trust.

Furthermore, some people certainly hunger for authority and hence we can assume that such people may accept promises on a regular basis only because of their motivation to gain the control over the promissory duty of another. Consequently, the practice of promising seems to satisfy our authority interests

(Owens 2006, 2012). Such authority interest can be also explained by someone's attempt to secure equality between this person and the other party in their relationship. Imagine that Andrew is notorious for his inability to plan and organise things. By promising to Judith to go on holiday with her, Judith assumes the role of a decider in holiday-relating matters and therefore can start planning and organising the holiday. The point is that without the practice of promising, Judith would have no certitude that Andrew goes on holiday with her, and the control over Andrew's promissory duty gives her a good reason to invest time and money in organising and planning the holiday. It follows that the function of authority interests also supports (though not always) the function of creating and maintaining good relationships.

Finally, I believe that the practice of promising exposes, at least partially, moral character. As will be argued in the next section, promising expresses honesty and fairness, as well as their defects (dishonesty and unfairness) in action. There are people who tend to act in accordance with honesty and fairness while making and accepting promises. Nevertheless, some people usually fail to reach the minimal standards of honesty and fairness when exercising the power-right to promise and promissory rights. Such people manifest dishonesty and unfairness. Given that both groups of people act in such ways on a regular basis, it seems that the practice of promising reveals their character qualities and defects. This function of promising is fully compatible with the previous functions. Because one's knowledge of *who* the other party is constitutes one's reason to establish, maintain or re-establish some special moral bonds with that party, as well as creates one's trust (expectations) when interacting with the party.

Therefore, the four above-mentioned functions of promising appear to complement each other. They also seem to explicate promising in a less fractured way than the monistic approach, because one function leads to another. In the rest of this chapter, I argue that people have the moral duty to act in accordance with honesty and fairness when exercising the power-right to promise and promissory rights, and that the possession of these rights often results in the development of such virtues.

18. Exercising the power-right to promise and promissory rights

The practice of promising, as suggested in the last section, has at least four functions: (1) creating and maintaining moral bounds, (2) creating expectations, (3) satisfying authority interests, and (4) revealing moral character. These functions, I believe, highlight the importance of honesty and fairness in promising. The aim of this section is to demonstrate the fundamental connections between the power-right to promise and honesty on the one hand, and promissory rights and fairness on the other. More precisely, I argue that any correct exercise of these rights consists in reaching at least the minimal standards of honesty and fairness, and that any misuse of such rights expresses dishonesty and unfairness.

The power-right to promise and promissory rights are protective rights for they protect a human desire to hold the capacity for changing the normative landscape *via* promising, and a role-based desire that promisors fulfil their promissory duties, respectively. Nevertheless, these rights have also other functions, which differ from the four functions of promising. Both the power-right to promise and promissory rights provide their holders with discretion. While the former gives an option to make promises or not to make promises in order to change normative circumstances, the latter enables to waive or enforce the performance of the promissory duty.¹⁹ Therefore, even though the power-right to promise and promissory rights are essentially protective rights, their possession resides especially in *exercising* (i.e., constant choosing whether to make or not promises and whether to waive or enforce the performance of the promised action). The power-right to promise and promissory rights also develop virtues, as will be argued in the next section.

Since the possession of power-right to promise and promissory rights calls for exercising, these rights can be exercised either correctly or incorrectly (misused). Given the definition of promising offered above, whether or not one misuses such rights depends on that person's intentions of wronging the other

¹⁹ As Hallie Liberto demonstrates, 'on any theory a promisee holds the authority to determine whether the promisee gets released from the promise' (Liberto 2017: 400).

party when making promises or exercising the deliberative control over the promissory duty. There is some empirical evidence (Wilkinson-Ryan and Baron 2009, Cimino 2010) showing that someone's intentions play an important role in our evaluation of his or her behaviour in the roles of a promisor and a promisee. As Wilkinson-Ryan and Baron (2009) points out, people are 'highly sensitive to the suspicion' that they have been exploited or taken advantage of. Considering that the act of promising resides in offering to be bound that some state of the world is true, it seems plausible to assume that people are also sensitive to the suspicion that they have been tricked into false (hence unreliable) beliefs. Accordingly, I propose that someone misuses the power-right to promise whenever that person acts on the intention of tricking the other party into some false, unreliable belief, and that any misuse of the promissory right comes from someone's intention of exploiting the other party by assuming and/or exercising the discretionary control over the promissory duty of that other party.

Such intentions and their subsequent actions express dishonesty (tricking others into false beliefs) and unfairness (taking advantage of or exploiting vulnerable people). Based on the work of Peterson and Seligman (2004), honesty refers to being truthful and sincere while thinking about, judging and treating myself as well as others. Accordingly, dishonesty means being untruthful and insincere while thinking about, judging and treating myself as well as other people. Dishonesty, on my account, is the leading character weakness of people who often misuse the power-right to promise. Unfairness or injustice (I take fairness to be synonymous with justice here), on the other hand, is the leading character weakness of those who tend to misuse their authority gained from the possession of promissory rights. As Schmitz and Thrasher (2014) point out, fairness or justice can be understood in two generally different ways as someone's character trait and as a feature of social institutions. To avoid redundant complications, I define fairness simply as *one getting one's due*. Therefore, being fair consists in thinking about, judging and treating others in ways that they get their due, and to be unfair means to think about, judge and treat others in ways that they do not get their due.

Consider the formal definition of misusing the power-right to promise first:

- (1) The promisor's misuse thesis:** X issues an offer to bind him/herself to Y that some state of the world, *S*, is true in the future. In so doing, X is convincing Y of the truth of *S*. However, X
- (i) knows at the time of convincing that *S* will be untrue and/or
 - (ii) X does not care about the truth of *S* (i.e., does not intend to do whatever X can to secure the truth of *S*).

Imagine David who promises Daisy to meet her in front of his house at eight o'clock. Daisy does not reject David's offer and hence the binding promise is created. If David does not intend to meet Daisy at the time of issuing the offer, or if he is not sure about meeting her and does not intend to minimise the risk of not meeting her, David's intention is clearly to trick Daisy into thinking that he will meet her. Therefore, David expresses dishonesty and thereby misuses his power-right to promise.

- (2) The promisee's misuse thesis:** Y has a promissory right and X did not misuse the power-right to promise. Y misuses the authority gained from the possession of the promissory right when:
- (i) X finds out that *S* (some state of the world) will be untrue, even though X has tried hard to bring about the truth of *S*, or true only if some significant harm is caused. X asks, when possible, either for a release from the duty or for a postponement of the performance of the duty. Yet, Y refuses to release X from the duty, or to postpone the performance of the duty, or does so only if some disproportionate (unfair) compensation is secured.
 - (ii) X breaks the promise and is not justified in doing so, and therefore X violates Y's promissory right. Y demands some disproportionate compensation.
 - (iii) X makes an overextensive promise and Y does not reject it or failing that, does not release X from the promissory duty.

The concepts of vulnerability and overextensive promises need an explanation. Promisors can become vulnerable when, due to some unforeseen circumstances and/or unknown incapacities, promised states of the world are either untrue or true only if some significant harm is caused. This vulnerability creates the scope for unfair treatment. Since promissory rights provide their holder with an option to either waive or enforce promissory duties, the possession of such rights enables the right-holder to either act in accordance with fairness or to fail to reach the minimal standard of fairness.

Overextensive promises, the concept developed by Hallie Liberto (2017), are promises with content which provides promisees with ‘an obligation to refuse the offered promise or failing that, to subsequently release promisors from the promissory obligations’ (Liberto 2017: 395). In principle, any content which is immoral, or exceedingly burdensome to perform, or of ‘the wrong kind to be transferred to another person’s discretionary control’ (Liberto 2017: 397), makes a promise overextensive. The last type of content should not be transferred to another person’s discretionary control because it ‘involves a commitment to allow the promisee to do something physically or emotionally invasive to the promisor’ (ibid.: 398). Such promises (e.g., promises to have sex or not to have sex with other people or promises to donate organs and to reveal traumatic memories) succeed in creating promissory duties. However, Liberto argues that we have a moral duty to reject such offers to change the normative landscape or, if the offers have been already accepted, to release promisees from their duties as soon as possible.

The upshot of this section is that *any correct exercise* of the power-right to promise and promissory rights must consist in reaching at least the minimal standards of honesty and fairness. We seem to be highly sensitive to the suspicion that other people have either tricked us or exploited our vulnerability, and we do consider such actions to be wrong. They are wrong, as I have argued, because they are misuses of the power-right to promise and promissory rights. It follows that anyone who exercises these rights has the moral duty to act in accordance with honesty and fairness. This duty is assigned to the roles of a promisor (acting in accordance with honesty) and a promisee (acting in accordance with fairness), and therefore whoever decides to occupy such roles (by making and accepting promises in an everyday life) ought to fulfil that duty.

19. The development of honesty and fairness

The function of virtue acquisition in the case of the power-right to promise and promissory rights can be explained by the heuristic model of virtues because of the ascription of the above-mentioned duty to the roles of a promisor and a

promisee. For this duty-ascription transforms the power-right to promise and promissory rights (both *protective rights*) into role-based *enabling rights*.

To be more precise, the idea of the minimal standard of role-relevant behaviour (Chapter III.) implies the gradual evaluative system consisting of four general marks: *poor* (failing to reach the minimal standard), *appropriate* (the minimal standard), *well* (close to the perfect standard), *perfect* or *excellent* (the perfect standard). Considering that the roles of a promisor and a promisee contain the duty to achieve at least the minimal standards of honesty and fairness, it follows that there are other standards and that promisees and promisors can strive for approximating better or even perfect standards (the heuristic models of honesty and fairness). Both the power-right to promise and promissory rights are essential to this approximation, for they make it possible. In other words, people can develop honesty and fairness through perfecting the roles of a promisor and a promisee, but this perfection is possible only due to the possession of the power-right to promise and promissory rights.

Given that the heuristic model of virtues has been explained in detail (Chapter III.), I focus only on one objection to the function of virtue acquisition presented in this chapter, and one difference between the roles of a promisee and a promisor and other social roles. The most pressing objection is that people who tend to misuse the power-right to promise and promissory rights still hold these rights even though they constantly fail to reach the minimal standards of honesty and fairness. Put differently, such people cannot be deprived of these rights in the same way police officers can when they lose their job for the constant failure of achieving the minimal standard of role-relevant behaviour. If this is true, then the power-right to promise and promissory rights cannot have the function of virtue acquisition. The most striking difference lies in the fact that the roles of a promisor and a promisee can be perfected indirectly *via* perfecting other social roles. I discuss this difference first and then argue that people who often misuse their power-right to promise and promissory rights might be deprived of these rights for some time. This deprivation, as will be illustrated, move many people to start perfecting the roles of a promisor and a promisee. Therefore, even people who do misuse their rights on a regular basis might well be motivated to strive for achieving at least the minimal standards of honesty and fairness.

Many people who make and accept promises on a daily basis achieve or strive to attain at least the minimal standards of honesty and fairness. This does mean that they must always succeed in achieving these minimal standards, I only point out that they usually do. Their conduct suggests that these people take, for whatever reason, honesty and fairness to be important for human relationships and interaction, and they seem to think that promising is essential to such relationships and interaction. In other words, their moral convictions ascribe the duty to act in accordance with honesty and fairness to the roles of a promisor and a promisee. It follows that for those people the power-right to promise and promissory right functions as role-based enabling rights allowing them to perform the role-based duty.

It should be highlighted that the roles of a promisor and a promisee differ from other social roles in one specific aspect: the former often come into being *within* the realm of the latter. Like virtues, promises do not exist in vacuum, for they require, first and foremost, our social reality. Put differently, one makes or accepts promises either *in the role of* _____, or, in some rare cases, *in the kind of* a human being, when the other party is some different kind, say, an alien or animals. Therefore, in our everyday life the roles of a promisor and a promisee come into existence *in other* social roles.

This characteristic feature of the roles of a promisor and a promisee implies that the power-right to promise and promissory rights permit the perfection of these roles through perfecting other social roles. Think of Andrew who makes and accepts promises as a husband, father, son, brother, friend, and a colleague on a daily basis. Suppose also that he almost always achieves at least the minimal standards of honesty and fairness when exercising his power-right to promise and promissory rights as a husband, father, etc. Given Andrew's way of exercising his rights, it seems very likely that he interprets the *ideal* husband, father, etc., as models which contain the perfect standards of honesty and fairness, for such role models also make and accept promises.²⁰ Consequently, Andrew can perfect the roles of a promisor and a promisee by perfecting the roles of a husband, father, etc., and such other social roles are perfected, partly, by the possession of the

²⁰ Note that the heuristic model cannot be detached from our ability to change normative circumstances if it is to serve as the model of virtues.

power-right to promise and promissory rights. Put differently, Andrew does not need to be directly motivated to perfect the roles of a promisor and a promisee in order to cultivate honesty and fairness by exercising his rights. For so long as Andrew strives to become a good (or excellent) husband, father, etc., he will eventually acquire better standards of honesty and fairness because he makes and accepts promises daily *whilst occupying* these roles.

Moreover, the way someone exercises the power-right to promise and promissory rights reveals the possession of either honesty and fairness or their defects. People who have reached the perfect (ideal) standard of honesty will be presumably more cautious about exercising their power-right to change normative circumstances than those who hardly manage to achieve the expected minimal standard. On the other hand, people who have fully or almost completely cultivated fairness will arguably never face an option to misuse their authority, because any unfair treatment of other people never even crosses their minds. There would be no scope for the expression of such virtues and their defects in action if people did not hold the power-right to promise and promissory rights providing them with *deliberation*.

Finally, since virtues can be manifested not only in *role*-relevant situations but also in *virtue*-relevant situations, it seems plausible to assume that people who usually act in accordance with honesty and fairness while making and accepting promises in certain roles (as a father, husband, etc.), will most likely become honest and fair whenever some situation calls for these virtues. Thus, on condition that people believe that they have a moral duty to act in accordance with honesty and fairness whilst changing their normative circumstances *via* the practice of promising, there is a high probability that the possession of the power-right to promise and promissory rights results in the development of honesty and fairness.

However, there are without doubt people who either do not believe that they have such a moral duty or often fail to fulfil that duty when participating in promising. These people misuse the power-right to promise and promissory rights on a regular basis, but they seem to possess such rights irrespective of this constant misusing. How can the possession of those rights lead to the development

of honesty and fairness in this case? Such people are clearly uninterested in perfecting either the roles of a promisor and a promisee or other social roles *via* ameliorating the roles of a promisor and a promisee. The answer resides in the fact that any regular misuse of the power-right to promise and promissory rights seems to have two severe normative consequences many people wish to avoid: (1) promisors become untrustworthy and (2) promisees earn a bad social reputation of individuals who take advantage of or exploit vulnerable people. I believe and am about to illustrate that most people do not want to face these consequences because they seriously affect the (general) capacity for changing normative circumstances.

Consider, firstly, the promisor's regular misuses making his or her untrustworthy for others. As Scanlon's (1990) Profligate Pal case demonstrates, any repetitive misuse of the power-right to promise affects the possession of that right. The Pal, as Scanlon pictures, has been borrowing money from people for years, promising to pay the money back and never doing so. Not only does the Pal's misusing ends in people's increasing unwillingness to lend him any money, it also results in his decreasing capacity to convince others of his intentions. After some time, people who know the Pal will stop believing his words. It means that any promise the Pal makes fails to deliver the 'message' including information on his intention to be bound to keep the promise, and therefore the Pal appears to be deprived of his power-right to promise.

Moreover, if others cease to believe his words that some promised states of the world will be true, they may well start taking all his assertions and affirmations with a pinch of salt. Why would he fulfil newly created duties originating from his consent to enter his house if he does not even attempt to perform his promissory duties? In other words, the Pal's general capacity to change normative circumstances by other power-rights, such as the power-rights to express consent or to take an oath, seems to be (at least) weakened too.

The consequence of the Pal's regular misuses has also direct impacts on his relationships and interactions with other people. I believe that the Pal will sooner or later start feeling the effects of his misusing, and such effects compel him to strive for restoring trust in order to regain the possession of the power-right to

promise and/or the general capacity to change normative circumstances. How can he inform us about his intents and feelings if the line between truth and lie is blurred? How can the Pal assure us that his statements about what he did or has done are true? This inability has without doubt many unpleasant practical consequences for the Pal's everyday life in the society. For it affects the Pal's capacity for establishing and maintaining morally valuable and sustainable relationships with others, and Aesop's fable on the boy who cried wolf is an evidence that people have been aware of such consequences for centuries.

Accordingly, I am inclined to think that most promisors who have in fact become untrustworthy like the Pal will eventually get motivated to restore trust. The main reason for doing so is to regain the possession of the power-right to promise or other powers derived from the capacity for changing normative circumstances. The only way how to restore the trust is to morally rehabilitate, that is, to prove to be trustworthy again. Such promisors must start expressing honesty in action (at least at the minimal-standard level) regularly, and they ought to keep doing so for a long time. In other words, the Pal should express honesty whenever he exercises the power-right to promise *in* as many roles he occupies as possible. Consequently, there seems to be a good chance of the habituation of honesty, for the Pal repeats practising the goal-relevant quality and, as Snow points out, '[t]he repeated performance of such actions results in habits of virtuous behaviour, which build up virtuous dispositions over time' (Snow 2016: 140).

In addition, we might assume that after some time of practising honesty, the Pal's character changes because it cultivates some standard of honesty. Although this quality is not fully developed, it can affect his interpretation of duties and activities that come with the role of a promisor as well as with other social roles he occupies. Put differently, the Pal can eventually get motivated to strive for some better standards of honesty.

Promisees, on the other hand, who often misuse their promissory rights earn a bad social reputation of individuals who exploit vulnerable people. This affects one's ability to receive and accept promises, because people will attempt to avoid making promises to that person. For they do not wish to take any risk of

becoming vulnerable in their relationships with that individual. Obviously, some people will be always forced to enter into promissory relationships with that person due to their social roles, but this does not undermine the fact that X's willingness to offer to be bound to Y that ϕ is directly proportional to Y's reputation of misusing the discretionary control gained from the possession of promissory rights. Consequently, any regular misuse of promissory rights also threatens the possession of such rights.

There are two main reasons why I believe that most promisees who have earned the bad reputation get motivated to improve their reputation through the moral rehabilitation. First, as Shiffrin (2008) points out, promises are the pivotal instrument for restoring equality between two parties in relationships. If people cease making promises to me, I may start feeling insecure because of my decreasing ability to restore the equality in my relationships. Recall the example of Andrew and Judith who plan to go on holiday together. Since Andrew is notorious for his inability to plan things, Judith assumes the discretionary control over Andrew's promissory duty to go on the holiday, so that she can start investing her time and money in planning the holiday. If Andrew had known that Judith exploits vulnerable people whenever the opportunity presents itself, he would have thought twice before promising to go on the holiday. Second, as Owens (2006, 2012) argues, many people have, at least to some degree, authority interests. Considering that the acceptance of someone's promise is one of the easiest ways to obtain authority, we might get motivated to regain the possession of promissory rights when we have weakened it by our constant misusing of such rights.

To improve one's bad reputation depicting that individual as someone who exploits or takes advantage of vulnerable people, that person must also start expressing the virtue, namely the virtue of fairness, (at least at the minimal-standard level) on a regular basis for a long time. Therefore, even promisees who do not believe that they have a moral duty to act in accordance with fairness whilst exercising their promissory rights will eventually face the need for the moral rehabilitation, because that is the only way to regain the possession of promissory rights and the authority that comes from this possession.

To conclude, the possession of the power-right to promise and promissory rights results in the development of honesty and fairness in many (perhaps most) cases. This development is explained by the heuristic model of virtues, for the power-right to promise and promissory rights, which are primarily protective rights, behave like role-based enabling rights allowing their holders to perform the role-based duty to act in accordance with honesty and fairness. Many people, as has been illustrated, endeavour to achieve at least the minimal standards of honesty and fairness whilst making and accepting promises because they believe to be held under the (role-based) moral duty to do so. Such people will eventually improve these standards, for they are motivated (either directly or indirectly) to perfect the roles of a promisor and a promisee. On the other hand, people who tend to misuse their power-right to promise and promissory rights will sooner or later face certain normative consequences which force them to reconsider their behaviour. I have argued that these consequences come with the decreasing ability to change normative circumstances as a result of one's regular misuse of the power-right to promise and promissory rights. Most people who actually become untrustworthy or earn the reputation of people who exploit vulnerable people get motivated to morally rehabilitate in order to regain their possession of the power-right to promise and promissory rights. In other words, they start to perfect the roles of a promisor and a promisee.

CONCLUSION

The aim of this dissertation was to investigate whether virtue ethics can provide the normative background for the justification of rights. Based on Wenar's Kind-Desire Theory and Snow's Minimal Virtue of the Folks, I could start researching into new, alternative and unexplored ways to justify many rights-ascriptions.

I have argued that rights have a plurality of functions and that one of these functions is to make the right-holder more virtuous. To demonstrate this, I have concentrated on role-based enabling rights, allowing their holders to perform role-based duties and activities, and protective rights, which protect role/kind-based desires that certain duties and activities are carried out by others. Enabling rights make up most role-based rights people held due to their occupations of social roles. These rights, I have argued, have the function of virtue acquisition because they allow the right-holder to strive for approximating ideal role models that define what virtues are and how such virtues should be expressed in action. Regarding protective rights, it has been shown that the possession of some protective rights, namely the power-right to promise and promissory rights, results in the development of virtues in the same way as in the case of enabling rights. Other protective rights, especially children's rights, develop virtues by protecting the right-holder's essential needs, for their protective function also protects and furthers the right-holder's capacity for virtue acquisition.

I do not claim that these are the *only* ways how the possession of rights can lead to the development of virtues. Considering that I have been concerned primarily with (molecular) claim-rights and the power-right to promise, there might well be other ways when it comes to other types of rights, such as (pure) immunity-rights, single-privilege rights and other power-rights. This eventuality calls for further research into the relationship between virtues and rights. I believe that my work has demonstrated that such connections are not only possible, but also stimulating. For the virtue-based justification of rights does not ascribe rights in order to provide people with liberty (choices) or to protect their interests, as argued by Will and Interest theorists, it assigns rights so that people can develop themselves through cultivating and acquiring more and more traits, qualities and skills. I do not deny that rights also provide people with liberty and protect their

interests. After all, rights have several functions, not only the function of virtue acquisition. I simply assert that the dissertation has succeeded in finding the justification of rights, according to which many (perhaps all) rights exist to permit the personal growth, that is, to make us better people in general. Therefore, I sincerely hope that other scholars researching into rights will cease to overlook virtue ethics whilst searching for the justification of rights.

There is one final remark to be made. I believe that the virtue-based justification of rights may have some impact on the field of artificial intelligence. Recently, a robot named 'Sophia' was granted a full citizenship in Saudi Arabia, which comes with many civic rights Sophia now holds. It is only a matter of time until the questions about rights-ascriptions to AI and their justification play an important role in our lives. Given that enabling rights exist to allow their holders to perform their duties and other tasks, there is no doubt that AI will sooner or later be ascribed this type of a right, for the AI will be assigned duties and tasks to be carried out. The question is whether the possession of an enabling right can lead to the 'personal growth' also in the case of AI. I am inclined to think that when AI is able to learn, it can also learn to perform its duties and tasks in a *better* way. Even though we might refuse to talk about the moral development here, we cannot deny the development of AI's skills.

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