Libertarianism and Potential Agents

A Libertarian View of the Moral Rights of Foetuses and Children

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ABSTRACT

This essay advances a libertarian theory of moral rights, which responds effectively to some serious objections that have been raised against libertarianism. I show how libertarianism can explain children’s rights to certain physical integrity and aid. I defend strong moral rights of human, pre-natal organisms, infants and children against all agents to certain non-interference with their physical integrity. I also argue that parents’ moral obligation to aid their offspring follows from a moral principle that prohibits agents to actively harm rights-bearers. Since this is the core principle of all versions of libertarianism, we gain simplicity and coherence.

In Chapter Two, I explain my theory’s similarities and differences to a libertarian theory of moral rights advanced by Robert Nozick in his 1974 book Anarchy, State, and Utopia. I explain the structure and coherence of negative moral rights as advanced by Nozick. Then, I discuss what these negative rights are rights to, and the criteria for being a rights-bearer.

In Chapter Three, I formulate a clear distinction between active and passive behaviour, and discuss the moral importance of foreseeing consequences of one’s active interventions.

In Chapter Four, I claim that some pre-natal human organisms, human infants, and children, are rights-bearers. I formulate a morally relevant characterization of potentiality, and argue that possession of such potentiality is sufficient to have negative rights against all agents.

In Chapter Five, I discuss whether potential moral subjects, in addition, have positive moral rights against all agents to means sufficient to develop into actual moral subjects. I argue that this suggestion brings some difficulties when applied to rights-conflicts.

In Chapter Six, I argue that potential moral subjects’ rights to means necessary to develop into actual moral subjects can be defended in terms of merely negative rights. By adopting the view advanced in this chapter, we get a simple, coherent theory. It avoids the difficulties in the view advanced in chapter five, while keeping its intuitively plausible features.

In Chapter Seven, I discuss whether the entitlement theory is contradictory and morally repugnant. I argue that my version of the entitlement theory is not.

Key words: abortion, active/passive, intention/foresight, libertarianism, negative rights, positive rights, potential agents
For my parents,
Margareta Andersson and
Sten Andersson
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PREFACE

In the preface of his 1974 book *Anarchy, State, and Utopia*, Robert Nozick makes the following reflection:

I do not welcome the fact that most people I know and respect disagree with me, having outgrown the not wholly admirable pleasure of irritating or dumbfounding people by producing strong reasons to support positions they dislike or even detest (Nozick 1974, p. x).

In contrast to Nozick, I have not completely outgrown such pleasures, even though it is doubtful whether they have produced the reactions Nozick mentions. Several patient and dedicated individuals have, however, contributed greatly during my writing of this essay, beginning fall 2002.

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CHAPTER ONE

INTRODUCTION

All versions of libertarianism claim that agents own themselves in some sense, and that agents become owners of material resources through certain use of their capacities, and through certain voluntary transactions with other agents. To own something is having the right to have it at one’s exclusive disposal. This implies that agents have negative claim-rights against other agents to certain non-interference with the agent and his or her property. Some, but not all, versions of libertarianism claim that agents have only negative rights.

The problem to be addressed in this essay is the following. Those of us who endorse some version of libertarianism are challenged to explain how our theory can accommodate arguments for children’s rights to certain physical integrity and aid. The challenges differ depending on what version of libertarianism we advocate. Those versions of libertarianism that only acknowledge negative claim-rights seem to imply that parents carry no moral obligations to aid their offspring. Furthermore, most versions of libertarianism have considered possession of certain capacities, such as agency and self-consciousness necessary for being a rights-bearer. Since at the least, very young children do not have these capacities, most versions of libertarianism seem to imply that these individuals do not even have rights to certain physical integrity. Less controversially, these versions seem to imply that human, pre-natal organisms lack these rights. I find all these implications morally repugnant, and the presumed implication that very young children lack moral rights to physical integrity and aid has been described as an “embarrassment” for libertarianism (Narveson 1988, p. 269). The challenge, then, is to construct a coherent libertarian theory that avoids these implications.

\[\text{\textsuperscript{1}}\text{There are several distinctions in meaning within the term “parent.” The meanings of the term “parent” that are relevant to the main argument of this essay will become clear by the contexts in which they are used.}\]
The purpose of this essay is to meet this challenge. Although my theory departs from it on some aspects, I will formulate a libertarian theory that closely resembles the theory put forth by Robert Nozick in his 1974 book, *Anarchy, State, and Utopia*. The defence of this libertarian theory does not, however, fall within the scope of the essay. My aim is merely to argue that such a theory can meet the challenge stated above. The libertarian theory will not be worked out in all its details; instead I will focus on the parts that are relevant to my discussion of the rights of pre-natal organisms, infants, and children – specifically with regard to their parents and other agents.

My main thesis is that potential autonomous agents have negative rights against all agents not to be actively harmed or killed. In addition, they have rights against their parents to means sufficient to develop autonomous agency. These rights to aid, I will argue, can be defended in terms of merely negative rights. I will suggest an alternative, systematic explanation and justification of the intuition that potential autonomous agents have rights to aid. Instead of referring to egalitarian moral principles, as Peter Vallentyne (2003), Michael Otsuka (2003), and others do, I will justify the right to aid by applying a moral principle which claims that rights-bearers may not be intervened with in certain ways without their consent. Hence, the claim that potential autonomous agents have rights to aid is an implication of the core principle of all versions of libertarianism, rather than a somewhat ad hoc complement to it.

1. **LIBERTARIANS ON THE MORAL RIGHTS OF HUMAN PRE-NATAL ORGANISMS, INFANTS, AND CHILDREN**

In this section, I will provide a brief overview of libertarian contributions to the discussion of the moral rights of human pre-natal organisms, infants, and children. Some libertarians have denied that human, pre-natal organisms, infants, and children are rights-bearers, or have claimed that these individuals’ rights are less extensive than agents’ rights.

Murray N. Rothbard, in his 1982 book *The Ethics of Liberty*, claims that since “every woman has the absolute right to her own body” and “has absolute dominion over her body and everything within it” (Rothbard 1982, p. 98), she also has absolute dominion over a pre-natal organism in her body. Even after being born, the mother has limited property rights regarding her offspring, since she “created” it (Rothbard 1982, p. 99). However, “the parental property right must be limited in time” and “it also must be limited in kind” since claiming otherwise would be “grotesque” (Rothbard 1982, p. 99).
Parental ownership rights are, according to Rothbard, “of a ‘trustee’ or guardianship kind” (Rothbard 1982, p. 100). This means that no one, including the parents, may harm or kill an infant or child. But, no one (including the parents), may be forced to aid the infant or child either, since no one has positive rights to aid (Rothbard 1982, p. 100).

Williamson M. Evers, in his 1978 article “The Law of Omissions and Neglect of Children” advances similar views, though he does not take a clear stand on whether abortions where the pre-natal organism is killed and then removed, rather than removed and allowed to die, are morally permissible as well.

Jan Narveson defends a contract-based version of libertarianism, according to which all rights are founded in such mutual restrictions of behaviour that all rational agents must reasonably accept. According to this view, rights are created through mutual agreement between rational agents. Rational agents, who are not part of such agreement, have no rights, and they have no moral duty to restrict their behaviour toward others. The same goes for individuals who are not rational agents. Narveson labels rights created through such an agreement “fundamental rights.”

Narveson has argued in his 1988 book, The Libertarian Idea, that human pre-natal organisms, infants, and young children lack fundamental rights, since they are “not rational creatures eligible for participation in the ‘social contract’” (Narveson 1988, p. 270). He also denies that parents (or others) have fundamental duties to aid these individuals, since he believes that such duties cannot be defended in terms of merely negative rights. He opposes the claim that parents who neglect their offspring have harmed their offspring; he believes that endorsing the claim would make it difficult to uphold a clear distinction between positive and negative rights (Narveson 1988, p. 269). Yet, he claims that since people, in general, are inclined to resent child-abuse and to aid children in need, they will grant the child non-fundamental rights against themselves. No one may; however, grant the child rights against a third part without the third part’s consent. Even though “The primary and fundamental locus of rights … is in the competent and rational adult” (Narveson 1988, p. 272), “in contractarian theory we create rights, by granting them to people (on condition that they reciprocate, of course)” (Narveson 1988, p. 270); hence, people may do so, but are not required to grant rights to children as well.

Regarding human, pre-natal organisms, Narveson says, “The female body in which that fetus lies is the exclusive property of the woman whose body it is” (Narveson 1988, p. 272). “Explicit and clearly made commitments on her part” toward other “relevant adults” may restrict her from terminating the pregnancy, but “even those must be very strongly made to reverse this elementary freedom” (Narveson 1988, p. 272).

In contrast to Narveson, Hillel Steiner defends a version of libertarianism according to which certain rights are “natural” rather than
created through agreements (Steiner 1994, p. 228). Steiner, too, denies that humans who have not yet attained a certain amount of maturity have rights, but his reasons in support of this claim differ from Narveson’s.

Steiner, in his 1994 book, *An Essay on Rights*, claims that “minors” do not qualify as rights-bearers, since:

> … their presumed incapacity to make responsible decisions – the characteristic that makes them inappropriate subjects of duties and liabilities – makes them equally inappropriate subjects of powers and liberties whose possession is precisely what having rights amounts to (Steiner 1994, p. 245).

Steiner holds, “for political and rhetorical purposes we do sometimes want to speak of minors as having rights” (Steiner 1994, p. 245). However, he claims, what we aim at is rather protecting minors’ interests. Nevertheless, “because children cannot have rights, they cannot be included amongst those to whom any account of universal self-ownership extends” (Steiner 1994, p. 246). Before possession of the morally relevant capacities, humans are, according to Steiner, at their parents “disposal” (Steiner 1994, p. 248). Once in possession of them, humans are self-owners.

Certain general patterns of thought can be distinguished among these views: (1) Human, pre-natal organisms, infants, and at the least very young children have either restricted rights, or no rights at all, because they lack the properties necessary in order to be a rights-bearer, fully or partially (Narveson and Steiner). (2) Since women own their own bodies, they may terminate their own pregnancy at any time and for any reason (Rothbard, Everson, and Narveson). (3) Parents have at least partial ownership rights in their offspring, until the latter is sufficiently mature to qualify as a self-owner (Rothbard and Steiner). (4) Human, pre-natal organisms, infants, and children have no claim-rights against agents to aid (Rothbard, Everson and Narveson).

Nonetheless, some philosophers of the libertarian tradition have given a number of arguments for children’s right not to be harmed or killed, and for children’s right to aid. John Locke, in his 1690 book *Two Treatises of Government*, claims that children’s rights are as extensive as those of adults not to be harmed or killed, though they are under their parents “rule and jurisdiction” until they have reached majority (Locke 1690, Essay II, Chapter VI, sect. 55). His main argument for this claim is that agents only have rights to destroy their own property, and that children could not even be considered their parents’ property, since parents have not produced their offspring in a way that grants them entitlement in their offspring. In order to produce a child in a way that makes one entitled to the child, one must, according to Locke, understand and control every aspect of the production
(Locke 1690, Essay I, Chapter VI, sects. 52-54). Locke also claims that parents, by the law of nature, are required to care for their children’s needs (Locke 1690, Essay I, Chapter VI sect. 56, Essay II, Chapter VI, sect. 56).

Nozick has convincingly objected to both of these claims. First, regarding Locke’s claim that parents have not produced their children in a way that entitles them to their children: Nozick objects that Locke is unable to explain why agents come to own crops and cattle, which they have produced in the same way as children are produced, that is, by initiating a process without understanding and controlling every aspect of the production. Second, Nozick points out that Locke does not provide any arguments for parental obligation to aid, except for reference to the law of nature. Nozick claims that “this leaves unexplained why it requires the care from the parents, and why it isn’t another case of someone’s receiving ‘the benefit of another’s pains, which he had no right to’” (Nozick 1974, p. 289). In addition, according to Nozick, denial of parents’ ownership rights in their children “removes one base on which to found the responsibility of parents to care for their children” (Nozick 1974, p. 289). He does not explain why such responsibility would come with ownership.

Nozick claims that

… once a person exists, not everything compatible with his overall existence being a net plus can be done, even by those who created him. An existing person has claims, even against those whose purpose in creating him was to violate these claims. It would be worthwhile to pursue moral objections to a system that permits parents to do anything whose permissibility is necessary for their choosing to have the child, that also leaves the child better off than if it hadn’t been born (Nozick 1974, pp. 38-39).

Nozick neither discusses at what stage of an individual’s development he or she becomes a person, nor whether all those included in this group have as extensive rights as do adults. He does not indicate whether he believes that parents are morally required to aid their children.

Walter Block, in his 2004 article, “Libertarianism, positive obligations and property abandonment: children’s rights”, argues that children, according to libertarian theories that only acknowledge negative rights, are their mothers’, and to a lesser extent, their fathers’, property. However, Block claims “Babies, of course, cannot be owned in the same manner as applies to land, or to domesticated animals. Instead, what can be ‘owned’ is merely the right to continue to homestead the baby, e.g. feed and care for it and raise it” (Block 2004, p. 280). He does not support this claim with arguments. Consequently, according to this view, killing or harming the child is morally impermissible. In addition, Block argues, mothers have a positive obligation to announce to all prospective alternative caregivers that
she has abandoned the child, if she chooses to do so. Furthermore, she may not abandon it, and then restrain others from caring for it.

Peter Vallentyne, in his 2003 article “Rights and Duties of Childrearing” claims that children have rights against all agents not to be harmed or killed, as well as rights against all agents to aid. He considers the claim that children have as extensive negative rights as do adults convincing, since he sees no reason to claim that only actual autonomous agents have negative rights. Children, he claims, have interests, though perhaps not interests they are aware of, and therefore they have negative rights. As they develop autonomy, the capacity to make autonomous choices is the property that makes them bearers of negative rights. In addition, autonomous agents, as do children, have rights against all agents to certain aid sufficient to promote a basic level of equality of life prospects.

Michael Otsuka, in his 2003 book Libertarianism without inequality, claims that parents are morally required to “ensure that their children have adequate opportunity to develop the capacity and acquire the knowledge to make free, rational, and informed choices.” In addition, to “ensure that their children have adequate opportunity to develop the skills, capacities, and knowledge which would enable them to flourish in a range of political societies on offer” (Otsuka 2003, p 120).

I believe Vallentyne’s and Otsuka’s suggestions are the most promising replies yet to the challenge stated above. They acknowledge negative rights of children against all agents, as well as children’s rights to certain aid. Explaining the latter right by referring to some version of egalitarianism seems, however, to be too high a price to pay for making libertarianism plausible. In this essay, I will suggest an alternative view, which avoids egalitarianism, and extends the group of rights-bearers to include some human, pre-natal organisms as well.

It should be noted that any attempt to a systematic comparison with, and defence against, the views presented in this introduction is beyond the scope of this essay. My aim is merely to formulate a coherent libertarian theory of rights, and try to show that it has the benefits just suggested.

2. OVERVIEW OF THIS ESSAY

The essay is structured as follows. In Chapter Two, I outline my libertarian theory. I subsequently compare it to Nozick’s theory and explain in what ways it is similar, as well as in what ways it departs from his. I explain the structure of negative moral rights as advanced by Nozick; then discuss whether his notion is coherent, and suggest an alternative view. Continuing, I discuss what these negative rights are rights to, and the criteria for being a rights-bearer.
In Chapter Three, I clarify and elaborate the outline sketched in Chapter Two. I formulate a clear distinction between active and passive behaviour, which is necessary to fully grasp the distinction between positive and negative rights. I also discuss the moral importance of foreseeing the consequences of one’s active interventions.

In Chapter Four, I claim that potential moral subjects, that is, pre-natal human organisms, human infants, and children, belong to the group of individuals who are rights-bearers. Formulating a morally relevant characterization of potentiality, I argue that possession of such potentiality is sufficient to have negative rights against all agents.

In Chapter Five, I discuss the conjecture that potential moral subjects, in addition, have positive moral rights against all agents to means sufficient to develop into actual moral subjects. I argue that the conjecture, though intuitively plausible, brings some difficulties when applied to cases of conflicts between rights.

In Chapter Six, I argue that potential moral subjects’ rights to means necessary to develop into actual moral subjects can be defended in terms of merely negative rights. By adopting the view advanced in this chapter, we get a simple, coherent theory. It avoids the difficulties in the view advanced in Chapter Five, while keeping its intuitively plausible features.

In Chapter Seven, I address an objection against Nozick’s entitlement theory, which was raised by Susan Moller Okin. She argues that the entitlement theory is contradictory and morally repugnant. I argue that even though she succeeds in charging the entitlement theory with moral repugnance, my version of the entitlement theory avoids her criticism entirely.
CHAPTER TWO

THE NORMATIVE OUTLOOK: A LIBERTARIAN THEORY OF MORAL RIGHTS

1. INTRODUCTION

In this second chapter, I will outline the normative outlook of this essay, henceforth referred to as “Liberty”. Liberty states that agents fully own themselves, and that agents become owners of material resources through certain use of their capacities, and through certain voluntary transactions with other agents. It also states that agents only have negative claim-rights against other agents to certain non-interference with the agent and his or her property. Liberty is a theory of rights that is, in many parts, similar to the one advanced by Robert Nozick in his 1974 *Anarchy, State, and Utopia*, but which also departs from it in some aspects. I will make minimal revisions of Nozick’s theory where revision is necessary to make it plausible. I will also make it more precise where doing so is necessary to make it clear. I will explain what parts of his theory I accept, and make clear in what respects I distance myself from it. My main disagreements with Nozick concern whether rights or duties ought to be considered as fundamental, and what properties motivate an individual having rights. The objective of this chapter and the one that follows is to present the normative theory, which will be applied in the discussion, in Chapters Four to Seven, of the rights of pre-natal organisms, infants and children with regard to their parents.

The chapter is structured as follows. In sections two and three, I explain and criticise the structure of Nozick’s negative claim-rights. I also suggest an alternative structure. In section 3:1, I discuss whether Nozick’s view is rational. In section four, I discuss what types of behaviour are morally impermissible. In section five, I discuss what properties distinguish rights-bearers.
2. NOZICK’S MORAL SIDE-CONSTRAINTS

In this section, I will explain the structure of negative claim-rights, which Nozick defends. I will also point out a problem with this structure, to be addressed in section three. Nozick claims that rights-bearers have negative claim-rights, that is, other agents have correlative duties to abstain from intervening with the rights-bearer in certain ways. Exceptions are cases where the rights-bearer exposed to the intervention in question has consented to it, or cases of self-defence, or infliction of morally permissible punishment. He does not exclude the possibility that the side-constraints “may be violated in order to avoid catastrophic moral horror” (Nozick 1974, p. 30n). He does not develop further what events or states of affairs qualify as “catastrophic moral horror.” I will postpone the discussion regarding whether rights are absolute until Chapter Three. Nozick’s argument for moral side-constraints is that individuals have rights in virtue of being carriers of certain morally valuable properties:

> It would appear that a person's characteristics, by virtue of which others are constrained in their treatment of him, must themselves be valuable characteristics. How else are we to understand why something so valuable emerges from them? (This natural assumption is worth further scrutiny.) (Nozick 1974, p. 48)

He also claims that other agents’ negative duties not to intervene with the individual in certain ways are derived from these rights:

> In contrast to incorporating rights into the end-state to be achieved, one might place them as side constraints upon the actions to be done: don't violate constraints C. The rights of others determine the constraints upon your actions (Nozick 1974, p. 29).

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1 What does Nozick mean by the term “consent”? I take it that he requires that the individual, while giving consent, is not physically threatened or physically coerced by any other agent, and that he or she is not intentionally deceived into giving consent (Nozick 1974, p. 31-32). It is not clear whether Nozick also requires that the individual is capable of autonomous choice while giving consent. I believe, however, that this is a plausible requirement. The very purpose of requiring that an agent receive another individual’s consent before intervening with the latter in certain ways is to ensure that the latter is not used in ways except as he or she chooses. If the individual giving consent is incapable of autonomous choice, he or she is used in ways he or she has not chosen. Is it morally permissible to intervene with an individual in certain ways without prior consent, if the individual will in fact not object to the intervention? If the individual will not object, he or she has not been used in ways except as he or she chooses, and the intervention is morally permissible. I will develop a characterization of the term “autonomy” in section five, and discuss the moral relevance of intending and foreseeing consequences of one’s interventions in Chapter Three.
In the following section, an objection regarding inconsistencies in Nozick’s position will be discussed. I will discuss ways of meeting this objection, and suggest that the alleged inconsistency can be avoided if an alternative view is adopted, according to which duties are fundamental and rights are derived from duties.

3. AN ALTERNATIVE POSITION: DUTIES ARE FUNDAMENTAL, AND RIGHTS ARE DERIVED FROM DUTIES

Nozick believes that individuals have rights in virtue of being carriers of certain morally valuable properties, and that others have duties to abstain from violation of rights because these properties are worth protecting. Is it inconsistent to hold this belief, and claim, as Nozick does, that one may not violate rights even if doing so minimizes the total number of violated rights (Nozick 1974, p. 30)? If the purpose of side-constraints is to protect certain morally valuable properties and the total number of violations of the rights whose purpose it is to protect these properties can be minimized if some rights are violated, is Nozick forced to accept a kind of “utilitarianism of rights”? He explicitly states that his theory does not imply such utilitarianism of rights (Nozick 1974, p. 30). I believe he is justified in making this claim. The claim that a property is morally valuable does not necessarily imply that one is morally permitted, or morally obligated, to minimize others’ violations of the rights whose purpose it is to protect these properties, by any means available. The moral value of each right remaining inviolate could be infinite, or lexically superior. According to Nozick, such a view would not imply that one may minimize the total number of rights-violations by means of a rights-violation, though such a view would still be goal-directed rather than constraint-based:

... each person could distinguish in his goal between his violating rights and someone else’s doing it. Give the former infinite (negative) weight in his goal, and no amount of stopping others from violating rights can outweigh his violating someone’s rights. In addition to a component of a goal receiving infinite weight, indexical expressions also appear, for example, “my doing something” (Nozick 1974, p. 29n).

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2 I am grateful to Niklas Juth for pointing this out to me.
I will not ponder on whether this view is goal-directed, since there is a yet simpler way, which clearly is not goal-directed, and does not rely on any idea of values, of explaining why it is morally impermissible to violate a right in order to minimize the total number of violations:

*Duties are fundamental.* The moral side-constraints ought to be respected because agents have duties not to intervene in certain ways with carriers of certain properties without the latter’s consent.

This position is consistent, but there are no quotations that could be referred to as clear evidence that Nozick would have accepted it. He does; however, mention such a position as a possible alternative, at least in some cases:

On this view, many procedural rights stem not from the rights of the person acted upon, but rather from moral considerations about the person or persons doing the acting (Nozick 1974, p. 107).

According to the suggested view, each agent has a moral duty not to intervene in certain ways with carriers of certain properties without their consent, and the latter have derived rights not to get exposed to certain interventions unless they have consented to such treatment. The morally relevant properties distinguish those individuals against whom other agents have duties, but the purpose of the duties is not to protect the properties. While Nozick’s view requires agents to respect rights for the sake of the rights-bearer, my view requires agents to abide to certain duties for their own sake: if an agent does not act in accordance with certain duties, he or she has behaved in a way that is undignified for agents. Hence, my position is closer to Kant’s view than Nozick’s seems to be, even though he sometimes refers to his position as “Kantianism” (Nozick 1974, pp. 30-31, p. 32, p. 39).

### 3.1 ARE SIDE-CONSTRAINTS IRRATIONAL?

Nozick, even though he considers his position consistent, questions whether it is rational:

Isn’t it *irrational* to accept a side-constraint C, rather than a view that directs minimizing the violations of C? (The latter view treats C as a condition rather than a constraint.) If nonviolation of C is so important, shouldn’t that be the goal? How can a concern for the nonviolation of C

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3. The term "undignified" is vague, but making it more precise is not necessary for my purposes.
lead to the refusal to violate C even when this would prevent other more extensive violations of C? What is the rationale for placing the nonviolation of rights as a side-constraint upon action instead of including it solely as a goal of one’s actions? (Nozick 1974, p. 30)

Kasper Lippert-Rasmussen says in his 1999 article, “In What Ways are Constraints Paradoxical?” (Reprinted in Deontology, Responsibility, and Equality, 2005) that it is not obvious from the quotation above what Nozick considers the alleged irrationality to consist in. “The first and fourth sentences in the quoted passage obviously do not help us” (Lippert-Rasmussen 2005, p. 123) since in these two sentences, though questions are raised, no propositions are made. Regarding the first sentence, “Isn’t it irrational to accept a side-constraint C, rather than a view that directs minimizing the violations of C?” Lippert-Rasmussen is, of course, correct in claiming that asking whether constraints are irrational cannot constitute an answer to the question why constraints are irrational. However, the question cited above can be reformulated as a proposition. It seems reasonable to understand Nozick as trying to defeat the following proposition: “It is irrational to accept a side-constraint C, rather than a view that directs minimizing the violations of C”.

Assuming that Nozick’s question can be formulated as a proposition, the task of interpreting the proposition remains. Support for an accurate interpretation might be found in the second and third sentence. Lippert Rasmussen claims “neither is the second sentence helpful” since “… side constraints would be puzzling even if their violation were not ‘so important’ a matter (as, indeed, the non-violation of some constraints is, e.g., a constraint against trespassing other’s property)” (Lippert Rasmussen 2005, pp. 123-124). I believe Lippert-Rasmussen misinterprets the sentence when ascribing to Nozick the opinion that constraints ought to be respected only if they are sufficiently “important”. A more accurate interpretation of the sentence is simply “since constraints per definition ought not to be violated, isn’t it irrational not to minimize the number of violations?”

What does Nozick mean by “irrational”? Since we have seen above that he considers the argument for side-constraints consistent, the charge of irrationality he tries to defeat cannot concern irrationality understood as inconsistency. The third sentence in the quotation above offers some clues: “How can a concern for the nonviolation of C lead to the refusal to violate C even when this would prevent other more extensive violations of C?”

Nozick seems to mean that one might be irrational if one believes that a certain state of affairs (rights remaining inviolate) is desirable, and yet refuses to permit some rights-violations necessary in order to minimize the total number of rights-violations. Nozick seems to mean that a proponent of side-constraints must be able to present a rationale for his position other than its mere consistency, in order to be considered rational. “The stronger the
force of an end-state maximizing view, the more powerful must be the root idea capable of resisting it that underlies the existence of moral side-constraints” (Nozick 1974, p. 33). Nozick does not clearly state what he considers the criteria for assessing the strength of the two competing views to be, other than “powerful intuitive force” (Nozick 1974, p. 33).

This claim is entirely comprehensible. Nevertheless, Lippert-Rasmussen is right in saying that such a charge of irrationality does not pose a real problem to a libertarian of Nozick’s kind. Libertarians do place “the nonviolation of rights as a constraint upon action, rather than (or in addition to) building it into the end state to be realized” (Nozick 1974, p. 30). Nozick’s reason for requiring another rationale than mere consistency in order for his position to be considered rational must be either of the following: (1) End-state maximizing views ought to be considered correct until support is provided for the claim that they are incorrect. (2) End-state maximizing views carry strong intuitive support, and any view challenging them must carry at least equally strong intuitive support. The first reason unfairly puts the burden of proof on Nozick’s position. The other reason is unconvincing, since people’s intuitions regarding the correctness of normative theories differ, and it is highly controversial to claim that some people’s moral intuitions are more reliable than others are.

Nozick’s rationale for side-constraints is the following:

The moral side constraints upon what we may do, I claim, reflect the fact of our separate existences. They reflect that no moral balancing act can take place among us; there is no moral outweighing of one of our lives by others as to lead to a greater overall social good. There is no justified sacrifice of some of us for others. This root idea, namely, that there are different individuals with separate lives and so no one may be sacrificed for others, underlies the existence of moral side constraints … (Nozick 1974, p. 33)

Thus we have a promising sketch of an argument from moral form to moral content: the form of morality includes F (moral side constraints); the best explanation of morality’s being F is p (a strong statement of the distinctiveness of individuals); and from p follows a particular moral content, namely, the libertarian constraint (Nozick 1974, p. 34).

Nozick’s idea seems to be that the best explanation as to why sacrificing one moral subject in order to benefit another is morally prohibited is that, even though it is possible for one individual to undergo some sacrifices for his or her own total benefit, there is no social entity which benefits from one individual being sacrificed for another. All that has happened is that one individual has lost something, from which another has gained. I believe this conclusion is correct. It fits nicely with my suggested position as well.
It might be argued that my position is inconsistent. If it is important that one does not intervene in a certain way, it seems inconsistent to claim that one may not minimize such impermissible behaviour by engaging in impermissible behaviour. This objection can be met by clarifying what kind of duty is assumed. The duty in question is the agent-relative duty of each agent not to intervene in certain ways.

4. PRINCIPLES FOR ASSESSING THE MORAL STATUS OF ACTIONS

What types of behaviour, then, do such side-constraints prohibit according to Nozick? He claims that people may not, without their approval, be intentionally used as the means to produce the gain for other individuals.

Nozick elaborates this claim by attempting to draw some clear lines regarding what behaviours qualify as morally impermissible use of another moral subject. Not all behaviours, he argues, that could reasonably fall under the description “using a moral subject as a means to an end without his or her consent” are morally impermissible, since “this is an impossibly stringent condition” (Nozick 1974, p. 31). Using him or her, as a means may even be morally permissible should he or she object to such use.

This claim needs to be made more precise. Nozick claims that one may use another as a means even if he or she has not approved positively to every such use:

It is sufficient that the other party stands to gain enough from the exchange so that he is willing to go through with it, even though he objects to one or more of the uses to which you shall put the good. Under such conditions, the other party is not being used solely as a means, in that respect. Another party, however, who would not choose to interact with you if he knew of the uses to which you intend to put his actions or good, is being used as a means, even if he receives enough to choose (in his ignorance) to interact with you. (“All along, you were just using me” can be said by someone who chose to interact only because he was ignorant of another’s goals and of the uses to which he himself would be put.) (Nozick 1974, p. 31)

In the quotation above, Nozick claims that, as long as the other party is aware of all the ways in which you intend to use him or her, and deliberately engages in cooperation with you according to the terms agreed on, using him or her is morally permissible even though the other party may not find the terms agreed on optimal for him or her.
There are, of course, morally prohibited interventions, which do not fall under the description “using a moral subject as a means”. These include interventions where the agent’s sole purpose is harming another moral subject. Such interventions are, for example, bodily intrusions not consented to, which are not cases of self-defence, defence of others, morally permitted punishments for crime, or a means for collecting compensation for some rights-violation, yet not using the victim as a means. Interventions that are, in my opinion, rights-violations, though not discussed by Nozick, also include certain kinds of unwanted psychological intrusions, that affect the exposed individual’s ability to function as an agent. Only physical and psychological intrusions are relevant for the argument of this essay. Hence, I do not deny that, for example, those cases of stealing, which do not fall under the description “physical intrusion not consented to”, or “psychological intrusion not consented to” are morally impermissible, but such violations are the subject of another book.

Nozick considers certain kinds of risk-exposure to other persons morally impermissible, regardless of whether it results in actual harm or not (Nozick 1974, pp. 73-78). In this essay, I will classify as rights-violations only interventions that actually do inflict harm to others.

Agents have a moral obligation to intervene in order to prevent their previous intervention from harming or killing another moral subject, and to compensate the victim properly, should harm actually occur. Contracts established between consenting parties can also create moral obligations of one individual to aid another. Except from these cases, where an agent owes another aid due to previous interventions or agreements, there are no moral obligations to aid.

5. WHICH ARE THE MORALLY RELEVANT PROPERTIES?

I have not yet touched upon the issue as to which properties determine whether an individual belongs to the group of individuals toward which others have duties. Nozick suggests that the morally relevant property is “the capacity to … shape [one’s] life”, and to do so “in accordance with some overall plan” (Nozick 1974, p. 50). However, he also considers this claim problematic in several ways. I will depart from Nozick by stipulating without argumentation that the morally relevant property is autonomy in a certain sense, and argue that Nozick’s argument supports this claim, even though he does not explicitly acknowledge it. Motivating my choice of autonomy as the property which distinguishes rights-bearers is a crucial task, but not one to be dealt with in this essay. Instead, I remain contented with
noting its intuitive plausibility. I will, however, in Chapter Four, provide thorough argumentation for the claim that potentiality for autonomous agency gives an individual rights. Nozick does not discuss the moral status of potentiality at all in Anarchy, State, and Utopia.

I define “autonomy” as “capacity to survey one’s available courses of behaviour, and make reflected choices between these alternatives.” It is common to distinguish between first and second order autonomy. First order autonomy is the capacity to make reflected choices between alternative routes of behaviour. Second order autonomy is capacity to, in addition, reflect over one’s preferences. I will assume that the capacity for autonomy, which distinguishes rights-bearers, is the capacity for second order autonomy. Nozick does not define “autonomy”, but his use of the term suggests that he takes it to mean at least what I have called first order autonomy (Nozick 1974, pp. 48-49). I will assume that in order to belong to the group of individuals against which others have duties, one must have capacity for (at least) some autonomous choice of the second order. In order to belong to the group of individuals who have moral duties, one must have this capacity. The extent of the duties increases as this capacity increases.

A moral subject’s level of autonomy may never be decreased against his or her will, unless he or she intentionally, or with foresight, decreases or threatens to decrease another moral subject’s level of autonomy in a morally impermissible way.

Decreasing the level of autonomy of another moral subject without his or her consent is, of course, only one of many ways in which moral rights can be violated. Furthermore, it is a delicate matter to draw clear lines between behaviours, which ought to be classified as rights-violations, and those that ought not. I will address this difficulty only when it poses difficulties for the argument of this essay.

Being autonomous is, according to Nozick, necessary (Nozick 1974, p. 49), but not sufficient (Nozick 1974, pp. 49-50) for being a rights-bearer. He begins his argumentation for this claim by listing some properties that are commonly considered strong candidates for being classified as morally relevant properties:

The traditional proposals for the important individuating characteristic connected with moral constraints are the following: sentient and self-conscious; rational (capable of using abstract concepts, not tied to responses to immediate stimuli); possessing free will; being a moral agent capable of guiding its behaviour by moral principles and capable of engaging in mutual limitation of conduct; having a soul (Nozick 1974, p. 48).

Nozick claims that all these listed properties, except the last, seem “insufficient to forge the requisite connection” (Nozick 1974, p. 48) between
the property in question and moral side-constraints. I will only discuss why he considers the property of being autonomous insufficient. Even though Nozick does not use the term “autonomy” in the quotation above, his discussion suggests that he takes it to have the same meaning as the term “free will”, as he uses it in the quotation above. Nozick states the following rhetorical questions:

If a being is capable of choosing autonomously among alternatives, is there some reason to let it do so? Are autonomous choices intrinsically good? If a being could make only once an autonomous choice, say between flavors of ice cream on a particular occasion, and would forget immediately afterwards, would there be strong reasons to allow it to choose? (Nozick 1974, pp. 48-49)

The quotation above shows that Nozick claims that a being is autonomous as long as it possesses an actual capacity for autonomous choices, regardless of the durability of the possession of the capacity. His formulations suggest that he requires at least a certain durability of the possession of the capacity in order for it to be considered morally relevant. In addition, he seems to require that the individual have a sufficiently extensive memory span in order for the capacity for autonomous choice to be morally relevant. Nozick continues by suggesting that the conjunction of “rationality, free will, and moral agency” might:

… add up to something whose significance is clear: a being able to formulate long-term plans for his life, able to consider and decide on the basis of abstract principles or considerations it formulates to itself … a being that limits its own behavior in accordance with some principles or picture it has of what an appropriate life is for itself and others, and so on (Nozick 1974, p. 49).

But, Nozick argues, this property “exceeds” the three properties rationality, free will, and moral agency:

We can distinguish theoretically between long-term planning and an overall conception of a life that guides particular decisions, and the three traits that are their basis. For a being could possess these three traits and yet also have built into it some particular barrier that prevents it from operating in terms of an overall conception of its life and what it is to add up to (Nozick 1974, p. 49).

Therefore, Nozick suggests that the capacity for “long term planning and an overall conception of life” should be considered as an independent morally
relevant property, for whose occurrence the three traits are necessary, but not sufficient.

Does the capacity to shape one’s life in accordance with some overall conception differ from the capacity for autonomous agency that is sufficiently durable? It seems possible to be durably first order autonomous, and yet lack the capacity to shape one’s life in accordance with some overall conception. Choosing between alternatives in accordance with unreflected preferences does not require capacity for long term planning. Nevertheless, saying that someone is being durably second order autonomous is another way of saying that he or she is capable of shaping his or her life in accordance with some overall plan. I conclude that Nozick’s argument implies that sufficiently durable second order autonomy is a property that gives its bearers moral rights, even though he does not explicitly acknowledge this conclusion.

6. CONCLUSION

In this chapter, I have outlined Liberty, and discussed in what ways it differs from Nozick’s theory of rights. In summary, Liberty states that second order autonomous agents, henceforth referred to as “moral subjects”, belong to the group of individuals against whom other moral subjects have strong negative duties of non-interference, but no positive obligations to aid.

In the following chapter, I will formulate a precise distinction between positive and negative rights, by defining the difference between active and passive behaviour. I will also discuss the moral importance of intending and foreseeing consequences of one’s actions. Finally, problems regarding conflicts of rights and cases of self-defence will be addressed.
CHAPTER THREE

THE ACTIVE/PASSIVE DISTINCTION
AND THE INTENTION/FORESIGHT DISTINCTION

1. INTRODUCTION

In this third chapter, I will clarify Liberty, which was outlined in the preceding chapter. I claimed that the only morally impermissible behaviour is actively intervening with moral subjects in certain ways without their consent, while all passive allowances are morally permissible. I have not yet formulated a clear distinction between active and passive behaviour. Doing so is the first task of this chapter.

I will argue that it is possible to make a clear active/passive distinction between the behaviours of an agent A as described in the following two cases:

1) A pushes B into deep water. B drowns.
2) A does not rescue B who already lies in deep water. B drowns.

I will argue that case 1) is a case of active killing, while case 2) is a case of passive killing. The reason for 1) but not 2) being a case of active killing, is that in 1), A breaks a chain of events and thereby causes certain states of affairs. I will argue for this thesis by investigating ways of drawing the making/allowing distinction that have been put forth by Torbjörn Tännsjö, Jonathan Bennett, and Alan Donagan. I will suggest that Donagan’s distinction, slightly revised, is the only one of these three distinctions that is adequate for my purposes, meaning that it is general, and that, when wedded to Liberty, it makes the best moral sense of this doctrine. It does so because it classifies A’s behaviour as active in case 1) and passive in case 2). The former behaviour may be morally impermissible, but the latter is not (unless
combined with some kind of intervention), according to the moral intuitions held by advocates of Liberty. For brevity, I will call such a classification “Right.” Then, I will further examine and defend Donagan’s definition through discussion of some counter-examples.

Nonetheless, drawing the active/passive distinction is not sufficient. The moral importance of foreseeing events resulting from one’s active interventions need to be discussed as well. Doing so is the second task of this chapter.

2. SUGGESTED DISTINCTIONS. TÄNNSJÖ: THE ACTIVE/PASSIVE DISTINCTION-BASED ON LINGUISTIC INTUITIONS AND RELATIVE TO ACTIONS OF A CERTAIN KIND

The first distinction to be investigated is the one suggested by Torbjörn Tännsjö. He writes

The reason that many have believed that the active/passive distinction makes no sense is the correct observation that all concrete actions are active under some description of them. This means, as far as I can see, that we must give up the distinction between acts and omissions. However, this does not mean that we should jettison the active/passive distinction. It only means that we should conceive of this distinction as relative. At least some kinds of actions allow that we sort instances of them into the active or passive category, relative to the kind in question (Tännsjö 2004, p. 116).

According to Tännsjö, at least some concrete and particular acts can be considered as active or passive under different descriptions, but not as active or passive in themselves, and he claims that we have linguistic intuitions to tell the difference between active and passive actions under certain descriptions. At least some concrete actions instantiate types of behaviour that are active under some descriptions and behaviour that are passive under some descriptions.

If, for example, an action is of the kind "killing", we ought, according to the suggested distinction, investigate the role played by the agent in relation to the death of another creature. Whether the behaviour is active or passive is decided by the investigators’ intuition. Tännsjö claims that “There are clear-cut cases of active killing, and there are clear cut cases of passive killing (of allowing nature to take its course)” and he claims that:
“No criterion can be formulated here, I think, but no criterion is really needed.” (Tännsjö 2004, p. 18).

Here, it is important to note that Tännsjö’s suggestion might be sufficient for his purpose, which is to suggest an active-passive classification of certain kinds of actions that is acceptable according to our linguistic intuitions; but not for my purposes, since Tännsjö’s classification could give the "wrong" answers in certain cases, and since, in my opinion, linguistic intuition is not a sufficient criterion for the adequacy of a distinction. I claim that we can find a general criterion for an active/passive distinction. This general distinction has the theoretical advantage of being less shallow than the one grounded on linguistic intuitions.

3. BENNETT: THE POSITIVE/NEGATIVE DISTINCTION

Jonathan Bennett’s positive/negative distinction does not rely on linguistic intuition, and is an attempt to give a general distinction. Therefore, it might be theoretically adequate, and it might give answers in my two cases above that are "Right". I will investigate the arguments put forth by Bennett in The Act Itself (1995), and in “Whatever the Consequences” (1966).

In short, Bennett's strategy is the following: in his first step of argumentation, he distinguishes the behaviour that is relevant for the occurrence of a certain state of affairs. In the second step, he classifies this behaviour as positively or negatively relevant to the state of affairs. In the third step, he tries to solve a certain problem involved with the classification in the second step.

Initially, it is important to note that Bennett prefers to discuss positive and negative propositions (facts) about behaviour rather than propositions about actions. He explains that he will make the terms “positive” and “negative” “central” to his analysis, but not characterize acts as positive or negative, since “at any given moment, one’s behaviour is the subject of countless facts, infinitely many of them negative …” (Bennett 1995, p. 86).

Bennett’s analysis begins with a presentation of some propositions that describe events that we intuitively seem to classify as either events of making or events of allowing:

… ways in which a state of affairs can be a consequence of behaviour divide into two species:
Bennett writes “Perhaps each column is unified only by a ‘family resemblance’, so that the difference between the two, although systematic, cannot be expressed in a clean, unitary analysis” (Bennett 1995, p. 62). However, he will not settle for such a vague description without exploring better options. This approach seems to make his attempted distinction a more promising candidate for a theoretically adequate distinction than the one suggested by Tännsjö, and it might also deliver the "Right" answers in my two cases above.

Bennett uses three cases, involving a vehicle, in order to develop his analysis of the distinction between making and allowing, identifying the distinction between these concepts as the distinction between positive and negative propositions. The three cases are:

*Push*: The vehicle stands, unbraked, on the slope; agent pushes it; and it rolls over the cliff edge to its destruction.

*Stayback*: The vehicle is already rolling; agent could, but does not interpose a rock which could stop it; and the vehicle rolls to its destruction.

*Kick*: The vehicle is rolling to a point where there is a rock that can bring it to a halt. Agent kicks away the rock, and the vehicle rolls to its destruction (Bennett 1995, p. 67).

I suggest that “Push”, which will be classified by Bennett as behaviour that ought to be described by a positive proposition, is analogous to A’s pushing B into the water, and that, though it may seem uncertain whether “Kick”, which will be classified by Bennett as behaviour that ought to be described by a positive proposition, is analogous to any of my two cases, it is in fact analogous to A’s pushing B into the water, and that “Stayback”, which will be classified by Bennett as behaviour that ought to be described by a
negative proposition, is analogous to A’s not rescuing B who already lies in the water (Bennett 1995, pp. 4-6). However, I will argue below that Bennett’s distinction does not deliver the “Right” answer in variation of the second of my two cases.

Bennett writes that he will call the moment when the agent pushes the vehicle in “Push”, and the last moment when he could usefully have interposed the rock in “Stayback” “T₁”, and that he will call all conditions that hold at T₁, except those involving the agent’s behaviour, “E” (Bennett 1995, pp. 88-89).

**Step One: the Weakest Proposition Describing a Piece of Behaviour that is Relevant to a State of Affairs**

Bennett asks us to assume, “we wanted a full T₁-dated explanation of the vehicle’s faith in Stayback — that is, facts about how the world is at T₁, from which it will follow causally that the vehicle is destroyed at T₂” (Bennett 1995, pp. 88-89). He asks us to assume that E is the “proposition about Agent’s surroundings that is needed for the causal explanation that we seek” (Bennett 1995, p. 89). Thus, he discusses the factors that give a complete causal explanation of the occurrence of a state of affairs. Bennett illustrates this idea in the following way, using the cases “Stayback” and "Push" as examples:

What must we add to E to complete the explanation? That is, what is the weakest proposition A about Agent’s conduct at T₁ such that (E&A) causally imply that the vehicle is destroyed at T₂? The answer is that we need A = the negative fact that Agent does not interpose the rock. There are positive facts about how he behaves at T₁, but none fits the description ‘weakest fact that, when added to E, yields a complete causal explanation of the disaster’. The fact that Agent smiled at T₁ does not yield a complete causal explanation; the fact that he turned and walked away does yield one, but it is not the weakest fact that he does so. The negative fact that Agent does not interpose the rock is exactly what is needed: it is just strong enough to complete the explanation. Now look for a T₁-dated explanation for the disaster in Push. Here there are countless negative facts about how agent behaves at T₁, but none is strong enough to complete the explanation. For that we need the positive fact that he pushes the vehicle hard enough to start it moving (Bennett 1995, p. 89, my italics).

**Step Two: What is it for a Proposition to be Positive or Negative?**

In the second step, Bennett explains, “what it is for a fact or proposition to be negative”. Bennett suggests the following:
Let all the ways agent could move at time T – including staying still – be represented by a square. Each point on the square represents a proposition attributing to him some absolutely specific way of moving. A region of the square represents the disjunction of the propositions represented by the points in the region. Start, for example, with the proposition *He walks fairly slowly northwards*. Take every point proposition – every absolutely specific way of moving – that would make it true that Agent walks fairly slowly northwards; identify the points that represents those; then the region of the square that represents our original proposition is the region that contains just exactly those points. A line across this square represents a pair of propositions which are complementary within the square. They are not strictly contradictories because each entails the existence of agent at that time. I offer to define propositional negativeness only with respect to that framework. I propose this: A proposition about how Agent moves at T is negative if it is fit to be represented by a region that covers nearly the whole of the space of the possibilities for him at that time. That is, a proposition and its complement are positive and negative respectively if they divide the Agent’s behaviour space (as I shall sometimes call it) extremely unevenly; the highly informative one is positive, and its almost empty complement is negative (Bennett 1995, pp. 91-92).

I understand Bennett as saying that a proposition such as "He walks fairly slowly northwards" is true at a certain time T if the agent at T engages in one of several possible behaviours that make this proposition true: he could walk fairly slowly northwards while whistling, while waving his arms or turning his head in a certain direction and so on, and that those different ways of engaging in the relevant behaviour cover a certain amount of "behaviour space". These count as different ways of "walking fairly slowly northwards" as long as all these behaviours make the proposition that the agent walks fairly slowly northwards true, even though the features of the behaviour that are necessary in order to make the proposition true might be combined with other additional movements, such as whistling, turning his or her head, etc. These different possible ways of, for example, walking fairly slowly northwards could, however, be infinite, which causes difficulties when we face the task of deciding how much "behaviour-space" a certain proposition covers within the field of opportunities. Therefore, as we will see in step three of Bennett's argumentation, it is necessary to find a way of limiting the amount of propositions describing relevant behaviour.

Bennett’s line of argumentation raises a question. Bennett does not clarify exactly how little “space” positive propositions must cover in order to be positive, or exactly how much “space” negative propositions must cover in order to be negative. Bennett writes: “If neither region is much larger than the other, the question has no answer” (Bennett 1995, p. 111). This is a theoretical flaw, of which Bennett himself is well aware. It makes the distinction vague, which may subsequently cause problems if one wants to formulate absolute moral requirements and prohibitions.
Step Three: Comparing Specificity

The third step offers a way to distinguish “the relevant space of possibilities” (Bennett 1995, p. 92). Bennett argues that we need a method for deciding how much behaviour-space the propositions that describe behaviour that is positively or negatively relevant for a certain upshot cover. Bennett argues that we cannot simply add up, for example, propositions describing ways of walking and propositions describing ways of not walking, and see which propositions cover the largest amount of space within the field of opportunities, since the opportunities of walking or not walking could be infinite. Instead he says, “… two propositions about how Agent moves at a particular time are to be accorded the same amount of the behaviour space if they are equally specific […] this enables us to say that a given complementary pair divides the possibilities so unevenly that one is positive and the other negative” (Bennett 1995, p. 93). I will discuss neither how this suggestion should be understood, nor its adequacy, since these issues do not affect the main argument of this chapter.

Bennett’s distinction brings some theoretical difficulties. It seems that the distinction cannot be used to compare propositions such as “A pushed B into the water” and “A let B remain in the water”. Clearly, such propositions are not complementary. This could be considered as a limitation of his distinction, since it is convenient to have a tool for making distinctions between any propositions.

Perhaps Bennett could compare propositions such as these in the following way: The proposition “A pushed B into the water” is positive in an absolute way since it is positive in relation to the proposition “A did not push B into the water”, and the proposition “A let B remain in the water” is negative in an absolute way since it is negative in relation to the proposition “A did not let B remain in the water”. Thus, we are able to compare the proposition “A pushed B into the water” and “A let B remain in the water”, since they are both awarded a certain amount of behaviour-space. I will argue that the proposition only covers a certain amount of behaviour-space when compared to its complement, and that two behaviour-spaces, separated from their respective contexts, cannot be compared.

It might be suggested that the propositions can be compared when separated from their respective contexts. Since the proposition “A pushed B into the water” covers a certain amount of behavioural space when compared to the proposition “A did not push B into the water”, and since the proposition “A let B remain in the water” covers a certain amount of behavioural space when compared to the proposition “A did not let B remain in the water”, the propositions “A pushed B into the water” and “A let B remain in the water” might cover a certain amount of behavioural space
when compared to each other, since they might cover an absolute amount of the behavioural space consisting of descriptions of all possible behaviours.

This suggestion is not plausible. Recall Bennett’s claim that, when deciding whether a piece of behaviour ought to be described with a positive or negative proposition, the description of Agent’s surroundings, the circumstances of his or her behaviour, must be specified. The propositions “A pushed B into the water” and “A let B remain in the water” cannot be represented within the same square of behavioural space, since it does not make sense to claim that A, at a certain time T, can either push B into the water or let B remain in the water. The reason why this does not make sense is that B’s location, which is a circumstance of A’s behaviour, cannot be both in the water and out of the water at the same time.

Let us now examine whether his distinction gives the “Right” answers in my two cases. I will argue that it does not, if my second case is slightly varied. It seems obvious that Bennett would say that the first case, where A pushes B into the water, is a case involving behaviour that ought to be described with a positive proposition. It is the weakest proposition describing behaviour, which is a cause of B’s falling into the water, and the proposition presumably covers a smaller amount of behavioural space than the complementary proposition. It is comparable to pushing the vehicle. Further, it seems obvious that he would say that the second case, where A does not rescue B who lies in the water, is a case involving behaviour that ought to be described with a negative proposition. The proposition describing A’s refraining from rescuing B presumably covers a larger amount of behavioural space than the complementary proposition. It is comparable to not interposing a rock that would prevent the vehicle from crashing.

The second case could be varied as follows: assume that B lies in the water, and so does A. B will drown if A swims away from the scene as fast as A possibly can, since the avoidance of B’s rescue requires that A removes himself from the scene as fast as possible, because A’s staying swimming at the spot close to B would enable B to grab A, who is a better swimmer than B, and to float. Now, Bennett would consider A to be engaged in behaviour that would be described by a positive proposition, since the proposition describing A’s behaviour is both the weakest proposition describing a cause of B’s drowning and is very specific. But since we assume that the swimming away did not have a different effect than A’s absence (absence as an agent, had A been merely physically present but not swimming, he would have drowned, too) from the scene would have had, Bennett’s reply gives the “wrong” answer in this varied version of my case 2).

Therefore, I suggest that Bennett’s distinction between positive and negative propositions is both theoretically problematic, and gives the “wrong” answer in at least a varied version of my second case. We need a different distinction between active and passive behaviour or between
positive and negative propositions that could justify us in making a making/allowing distinction between A’s pushing B into the water and A letting B remain in the water.

4. DONAGAN: “ACTIVE/PASSIVE BEHAVIOUR” INTERPRETED AS “INTERVENING /NOT INTERVENING IN THE COURSE OF NATURE”

In this section, I will argue that a distinction between active and passive behaviour suggested by Donagan avoids the theoretical difficulties in Tännö and Bennett’s distinctions, and gives an answer that is “Right” in both cases above. Donagan’s distinction avoids the theoretical problems raised by Tännö’s distinction since Donagan’s distinction does not rely on linguistic intuitions. In addition, Donagan is able to compare propositions such as “A pushes B into the water” and “A let B remain in the water”.

Donagan begins his description of the active/passive distinction in the following way:

An action, as conceived by common law, is a deed done in a particular situation or set of circumstances; and that situation consists partly of matters external to the agent, such as the weather and the nature of the landscape, and partly of his own bodily and mental states, such as that he is standing by bracken at the edge of a forest. Should he be deprived of all power of action, the situation, including his bodily and mental states, would change according to the laws of nature. His deeds as an agent are either interventions in that natural process or abstentions from intervention. When he intervenes, he can be described as causing whatever would not have occurred had he abstained; and when he abstains, as allowing to happen whatever would not have happened had he intervened. Hence, from the point of view of action, the situation is conceived as passive, and the agent, qua agent, as external to it. He is like a deus ex machina, whose interventions make a difference to what otherwise would naturally come about without them. (Donagan 1977, pp. 42-43, my italics on line 9-11)

These formulations leave several questions unanswered. What, more precisely, characterizes an “intervention in the natural process”? Ought we, according to Donagan, to consider an agent as causing a certain event if he or she belongs to a group, which causes the event, where each of the individual members’ interventions are necessary but not sufficient in order to cause the event? Should we, according to Donagan, consider abstentions that are caused by the agent’s blocking of his or her own intentions or voluntary
or involuntary movements as abstentions or interventions in the course of nature; and, if the latter, is it reasonable to consider those as cases of interventions in the course of nature? Is Donagan’s definition useful for classifications of behaviour as active/passive in complex chains of events, where it is not obvious whether an agent abstains or intervenes? These questions will be addressed in the sections below, since they are all relevant to the main argument of this essay.

4:1 INTERVENTION IN THE COURSE OF NATURE – A CRITERION FOR ACTIVE BEHAVIOUR

In order to fully understand Donagan’s view on action-causation, we need to have a clear picture of his views on event-causation. Donagan characterizes “event-causation” in the following way:

… the standard view of a kind of causation I shall call “event-causation”, namely, that in which one event, say $E_1$, causes another, say $E_n$, is that in such a case $E_1$ must be a member of a set of events, $E_1 \ldots E_m$, none of them redundant and all occurring at the same time, such that, under some set of descriptions, the occurrence of $E_n$ is deducible from the occurrence of $E_1 \ldots E_m$, according to the laws of nature. That is, $E_1$ is one of a set of nonredundant conditions jointly sufficient for $E_n$. (Donagan 1977, pp. 38-39)

Donagan assumes that “actions are events of a certain kind” (Donagan 1977, p. 39). All that is said in the quotation above, therefore, applies to action-causation, although actions differ from events that are not actions by breaking chains of events:

A human being causes an event … either by directly making it happen or by directly making something else happen, which, as an intervention in the course of nature, is among a set of nonredundant conditions jointly sufficient for the event’s occurrence. He allows an event to happen when he abstains from intervening in some way open to him, while being aware that, apart from interventions by others, the event both will happen if he does not intervene in that way and will not happen if he does. (Donagan 1977, p. 50, my italics)

Note that Donagan requires that the agent is at least aware and foresees that he or she abstains from preventing an event, in order for the agent’s behaviour to be considered as an allowance of the event. He does not seem
to require that the agent is aware of an event he or she has caused in order for the behaviour to be considered as an intervention in the course of nature. Rather, Donagan formulates a definition of action-causation, which does not include this requirement. *All* actions break a chain of events, regardless of whether the agent is aware of the event his or her action causes. Having stated this qualification, which does not affect the remainder of Donagan’s argument until section 4:5 of this essay, I can now continue the examination.

### 4:2 WHEN DOES AN AGENT INTERVENE *QUA AGENT AND BREAK A CHAIN OF EVENTS?*

Donagan assumes, for the sake of the argument, that a human action always breaks a chain of events. He admits that a thorough argument for the distinction between actions and behaviour that are not actions would require a lengthy discussion (Donagan 1977, pp. 46-47). He refers to Richard Taylor’s 1966 *Action and Purpose* for a more thorough discussion, without mentioning explicitly whether Taylor’s attempted solution is one Donagan would accept (Donagan 1977, p. 45n).

Taylor argues for the thesis that the word “can” in a proposition such as “‘I can move my finger’ does not ever mean what it means when applied to inanimate things” (Taylor 1966, p. 55). We sometimes say that a combination of certain chemicals *can* explode, but we also understand that this meaning of the word “can” differs from the meaning of the word “can” when used in the sentence “I can move my finger”. Taylor claims, “… whether or not I do move my finger is ‘up to me’ or, to use a more archaic expression, is something ‘within my power’” (Taylor 1966, p. 55). He claims that we do understand intuitively what it means for something to be in one’s power, even though no one has provided a satisfactory *explanation* to what it means.

Our reasons for classifying some behaviour as breaking a chain of events *qua agent* and others as mere reactions to other events need to be discussed in order for the distinction defended in this chapter to be complete. However, for my purposes, it suffices to conclude that an agent breaks a chain of events when he or she engages in behaviour he or she reasonably could be requested or forbidden to perform (Taylor 1966, p. 104).

Once we have, in this way, defined “intervention in the course of nature”, we can conclude that agent A has not caused the drowning of agent B through an intervention in the course of nature, had B, while being pushed by A, had any opportunity to affect whether he or she would end up in the water and remain there until drowning. B could, while being pushed by A, but without being caused to drown by A, be caused to drown by an agent C,
or through the course of nature. B would then, while being pushed by A, not have any opportunity to affect whether he or she would end up in the water and remain there until drowning, but B’s drowning would not be caused by A.

**4.3 WHO IS AN INTERVENING AGENT AND WHO IS A CIRCUMSTANCE OF ANOTHER INTERVENING AGENT’S ACTION?**

Having defined “intervention in the course of nature” in this way, an example illustrating the difference between action-causation and circumstances of action-causation can be discussed. It is important to clarify the distinction between action-causation and circumstances of action-causation in order to examine Donagan’s active/passive distinction. The example, the first section of the quotation below, and the first sentence in the second section origin from *Causation in the Law* (1959) by H.L.A. Hart and Tony Honore:

(i) A forest fire breaks out, and later investigation shows that shortly before the outbreak A had flung away a lighted cigarette into the bracken at the edge of the forest, the bracken caught fire, a light breeze got up, and fanned the flames in the direction of the forest.

(ii) A throws a lighted cigarette into the bracken which catches fire. B, just as the flames are about to flicker out, deliberately pours petrol on them. The fire spreads and burns down the forest (Donagan 1977, p. 42).

In both these cases, Donagan claims, the throwing of the cigarette into the bracken “is one of a set of conditions jointly sufficient for the fire, and it is not redundant: if it had not occurred, the other conditions specified would not have been sufficient” (Donagan 1977, p. 42). He also says, “Yet only in case (i) can A’s action in throwing the cigarette be correctly described as the causing of the fire” (Donagan 1977, p. 42).

According to Donagan, B causes the fire in case (ii), since B breaks the chain of events. The effects of A’s behaviour in case (ii) ought, according to my interpretation of Donagan, be considered as a circumstance of B’s intervention. Donagan writes: “what determines whether [A’s] throwing away his cigarette was the causing of the fire is simply whether, *his situation being what it was*, the outbreak of fire followed from his deed in the course of nature” (Donagan 1977, p. 43, my italics). Even though
Donagan only mentions the circumstances of A’s actions, he has not given us any reasons to believe that he would claim that conditions caused by other agent's interventions ought not to be considered as circumstances and that only those conditions that are not caused by other agent's interventions ought to be considered as circumstances. As we have seen above, Donagan seems to mean that "circumstances" can consist of every factor, internal ("any mental states of the agent that are neither explicitly nor implicitly described in the action-description itself" (Donagan 1977, p. 40)) or external ("such as the weather and the nature of the landscape" (Donagan 1977, p. 42)), that is not a cause of the behaviour (it is described as "obtaining at the same time as the deed is done" (Donagan 1977, pp. 39-40)).

Another problem remains to be solved, which is not discussed with sufficient clarity and detail by Donagan in The Theory of Morality: Taylor’s criterion of an action that breaks a chain of events as being an initiation of change does not offer a complete criterion for an intervention in the course of nature, since it seems that such a criterion also must be supplemented with an explanation of why voluntary abstention from intervention does not qualify as a cause of a certain event, if the event would not have occurred had the agent actually intervened.

The following example illustrates the problem. A vehicle is rolling down a slope, but its rolling is not caused by Agent. If Agent kicks a stone in its path, the stone will prevent it from crashing into a cliff. If Agent intends to kick, has intentionally lifted his or her leg to kick, or, by a reflex, lifted his or her leg to kick, but then, in either of these three cases, changes his or her mind, or interrupts his or her movement, has Agent then intervened in the course of nature, and caused the vehicle to crash? Had Agent intervened with someone else who tried to prevent the crash, Agent would surely have caused the crash through an intervention in the course of nature.

I will argue that a voluntary abstention from a voluntary action ought not to be considered as an intervention in the course of nature, but that voluntary intervention with ones involuntary behaviour ought to be considered as intervention in the course of nature. Thus, voluntary abstention from voluntary behaviour is always passive. Donagan could reasonably be interpreted as claiming that a blocking of an intention or of a voluntary or involuntary movement could be considered as an intervention in the course of nature. Donagan claims, as we have seen above, that the "bodily and mental states" of an agent could be considered as the "situation", and as a part of the set of "circumstances", analogous to the external situation or "set of circumstances", which the agent finds him or herself in when he or she acts. I will discuss and partially challenge these claims.

A voluntary blocking by an agent A of his or her physical movements can, as seen in the example above, be of at least three different kinds:
(1) A forms an intention but does not initiate movement. A changes his or her mind. A abstains from intervening with the upshot by not following the initial intention.

(2) A forms an intention and initiates a movement. A changes his or her mind. A blocks the initiated movement through a voluntary act.

(3) A feels an involuntary movement coming. A blocks the movement before it has begun, or when A feels it coming, or when the involuntary movement is initiated.

Ought we to consider an intention, an initiated movement, or an involuntary movement as circumstances, and, if so, as a part of the course of nature, in which an agent acts? If so, should we consider the blocking of behaviour of any of the three kinds above as an intervention in the course of nature?

Consider case (1), where A forms an intention but changes his or her mind before initiating the movement. Is a former intention of the agent a circumstance in which the agent acts? As we have seen above, the possibility that Donagan would answer this question affirmatively cannot be excluded, since he describes a circumstance of an action as "stand[ing] around" or surround[ing]" the action, and as "obtaining at the same time as the deed is done", and as including "such things as the existence of evidence, the tendering of advice, and the presence of natural signs, all of which may refer to the past or the future" (Donagan 1977, pp. 39-40). He gives examples of such circumstances:

A juryman may render a verdict of guilty despite the circumstance that the evidence of guilt is weak; an investor may buy certain shares in view of the circumstance that his broker predicts that they will appreciate; and a prospector may drill a well on instinct, disregarding the circumstance that geological signs are wanting that oil was formed where he drills. It is also convenient, and not theoretically objectionable, to classify as circumstances of an action any mental states of the agent that are neither explicitly nor implicitly described in the action-description itself. And so, when a thief steals in hope of a large gain or in fear of punishment, I shall treat that hope and that fear as circumstances in which he steals (Donagan 1977, p. 40).

Is it reasonable to interpret Donagan as accepting that a formed intention, a "mental act", could constitute a circumstance in which the agent performs another mental act – the forming of a new intention? The intention is a "mental state of the agent" and it is not "explicitly" described in the action-description itself." Nevertheless, it may be “implicitly” described in the action-description itself. If the agent changes his or her mind, he or she is changing a previous intention, which is thereby implicitly acknowledged in the action-description. Being a circumstance of the new intention not to
intervene, it is not necessarily "nature" (as opposed to the agent's own agency) that is intervened with, it is rather an intervention with a process of intentional mental activity, and thus rather intervention with the agent's own agency, even though this agency might be considered as a circumstance as well. I conclude, therefore, that case (1) is not a case of the agent "intervening in the course of nature". The same goes for case (2), where A forms an intention and initiates a movement. The initiated movement is, no doubt, a circumstance of the intervention, but since the initiated movement is a result of the agent’s own agency, it is not "nature".

Someone might object that, if one is not intervening in the course of nature when one intervenes with ones own intentions and voluntary actions that are, in turn, circumstances of one's own actions, one is not intervening in the course of nature when one intervenes with other people's intentions (through persuasion, manipulation, etc.), or with other people's voluntary actions. The only difference between interventions with my own agency and interventions with other people's agency seems to be that it is my agency and not someone else's, and it seems doubtful whether this is a relevant difference. My reply to this possible objection is that this difference is relevant, because the agency as a whole of one agent over time consists of infinitely many adjustments and changes such as the ones described in cases (1) and (2). Nonetheless, this agency as a whole is the sum of all earlier adjustments and changes that has proceeded this action, and this is not the case when the agent relates to other people's agency, their agency, in turn, being the result of the same kind of process as the agency of the intervening agent.

Finally, consider case (3), where A feels an involuntary movement coming and A blocks it before it has begun, or when A feels it coming, or when the involuntary movement is initiated. This case is different from cases (1) and (2) above. It seems that the agent is intervening in the course of nature, since the movement ought to be considered as a circumstance that also ought to be considered as "nature" (as opposed to a result of the agent's own agency). Thus, I conclude that in case (3), the agent ought to be considered as intervening in the course of nature while blocking an involuntary movement, and thus as actively causing whatever would not have happened had the agent not intervened with his or her involuntary movement.

Consequently, I conclude that it is possible to make a distinction between active and passive behaviour, that does not consider blocking of the agent of his or her own voluntary movements as interventions in the course of nature.

The distinction defended above has controversial implications when applied to certain cases. If an agent abstains from intervening with his or her involuntary movement, and the involuntary movement causes another individual’s harm or death, the agent has not actively killed or harmed the
individual. Provided that the agent has not caused the involuntary movement (for example, by voluntarily taking some substance while being aware that it will cause convulsions) or is not in other ways morally responsible for being in the situation, he or she is not morally required to intervene with such a movement. The criteria for moral responsibility will be elaborated in section five.

In conclusion, Taylor’s distinction satisfactorily explains the criterion for breaking the chain of events, and the discussion above explains why the agent’s intervention with his or her voluntary movements is not an intervention in the course of nature.

4:4 COMPLEX CHAINS OF EVENTS

I will now discuss some possible difficulties with Donagan’s distinction, and suggest how these difficulties can be resolved. I have concluded that behaviour is active if it starts a chain of events that leads to a certain event, and passive if it does not, and that behaviour’s being active/passive is depending on what event we judge the behaviour in relation to, even though it can always be classified as active or passive in relation to some event. There are, however, cases where it is not obvious whether one has started a chain of events or merely allowed an event to happen. The reason for the uncertainty is that when we find ourselves involved in several complex chains of events, it might be difficult to decide whether we have started a chain of events or merely allowed something to happen. I will try to show that it is possible to formulate even more complete general criteria for “breaking a chain of events” covering such complex cases.

The following case is an example of a complex situation, where it is not obvious who intervenes and who allows an event to occur:

Consider the case of a patient terminally ill with ALS disease. She is completely respirator dependent with no hope of ever being weaned. She is unquestionably competent but finds her condition intolerable and persistently requests to be removed from the respirator and allowed to die. Most people and physicians would agree that the patient’s physician should respect the patient’s wishes and remove her from the respirator, though this will certainly cause the patient’s death. The common understanding is that the physician thereby allows the patient to die. But is that correct? Suppose the patient has a greedy and hostile son who mistakenly believes that his mother will never decide to stop her life-sustaining treatment … Afraid that his inheritance will be dissipated by a long and expensive hospitalization, he enters his mother’s room while she is sedated, extubates her, and she dies. Shortly thereafter the medical staff discovers what he has done and confronts the son. He replies: “I didn’t kill her, it was her ALS disease that
caused her death.’. I think this would rightly be dismissed as transparent sophistry – the son went into his mother’s room and deliberately killed her. But, of course, the son performed just the same physical actions, did just the same thing, that the physician would have done. If that is so, then doesn’t the physician also kill the patient when he extubates her? (Brock 2004, pp. 116-117)

Tännsjö claims that, according to his intuitions, these are both cases of passive killing, but he suggests how one could argue that the son but not the physician could be considered to be actively killing the patient:

However, some may have different intuitions. They may feel that, in the latter case, we are confronted with active killing. If they do, I think this may have something to do with the fact that the son, a third party, interferes with what the doctor does. When the doctor disconnects the patient from the ventilator, having first put the patient there, we may see this as an act of capitulation with respect to a natural course of events. Moreover, the patient would not have been on the ventilator in the first place, if it had not been for the intervention by the doctor. However, when a third party, (the son) intrudes and stops the doctor from saving the life of the patient, some may conceive of this as active killing. My intuition is still that we are here dealing with a case of passive killing (Tännsjö 2004, p. 117).

I believe that Tännsjö dismisses too quickly the suggestion that an intervention’s being active or passive depends on this specific agent’s earlier involvement in the chain of events. I will claim that, accurately developed, this suggestion can help us to arrive at a verdict in these types of complex cases. Very roughly stated, I suggest the following: an individual actively causes an event if the causing is not a case of neutralizing the effects of a former intervention by the same agent. If the causing is a case of neutralizing the effects of a former intervention by the same agent, the behaviour is passive. This suggestion is somewhat similar to a point made by Frances Kamm in Creation and Abortion (1992), though hers is normative, describing how one ought to behave depending on one’s earlier involvement in a chain of events (Kamm 1992, pp. 20-39). Here I part from Donagan, who would say that all interventions in the course of nature are active.

The suggestion raises at least two possible difficulties. Assume, as in the example given above, that the physician intervened in the course of nature while connecting the patient to the ventilator; and then, if disconnecting the patient allows the patient to die, since the physician then restores a condition that the patient was in before connecting him or her to the ventilator.
The first difficulty is that the suggestion does not tell us whether, when considering an action as active or passive depending on whether it restores a former condition, we are to do so in relation to the latest condition restored, or the initial condition, intervened with and restored, and perhaps intervened with again?

This distinction becomes crucial in a slight revision of the example involving the respirator. Assume that a physician intervenes in the course of nature by connecting the patient to the ventilator. The physician then intervenes again by disconnecting the patient, but not long enough for the patient to die. He connects the patient, but realizing the uselessness in prolonging the patient’s life, he disconnects again, and the patient dies. Is the physician restoring the initial, life-threatening condition before his first intervention, or does the physician restore the life-threatening condition that he himself caused by disconnecting the patient? The point of this morbid but unrealistic story, is that it is possible that agents are involved in such chains of interventions and restorations, and if we argue that the intervention’s position in this chain of events is deciding whether it is active or passive, we must decide whether the first or the latest intervention is the one we should judge our present intervention in relation to. I suggest that we should judge it in relation to the initial intervention, since this analysis is the least arbitrary. While connecting the patient for the first time, the physician clearly intervenes in the course of nature. All disconnections and connections of the respirator following this intervention can then be analyzed in relation to the initial intervention.

It is important to note that if one disconnects an individual from a respirator, and he or she dies from lack of support, the disconnection would be recreating the states of affairs that existed before connecting the patient to the respirator without harming him or her. However, if the individual were to catch and die from some disease because of being disconnected, disconnecting him or her would be actively harming him or her. This is regardless of the disconnection’s place in the chain of previous connections and disconnections. Such behaviour is morally impermissible, unless the patient consents to it.

In summary: The correct criteria for active behaviour is: an agent is active with respect to an outcome if he or she intervenes in a chain of events for the first time or with an action that does not restore a former condition that existed before the agent intervened for the first time. The correct criterion of passive behaviour is: an agent is passive with respect to an outcome if he or she does not intervene in a chain of events, or if he or she restores a condition that existed before the agent intervened for the first time.

The second difficulty is that this distinction between active and passive behaviour, relying as it does on what interventions have proceeded the present intervention, seems to challenge at least parts of Donagan’s criteria for active/passive behaviour, since it is certainly true that, had the
physician been passive, or if he or she had been absent from the scene, instead of disconnecting the patient, the patient would not have died, at least not from being disconnected by this particular physician. I suggest that Donagan’s criteria needs to be complemented in the following way: when trying to determine whether behaviour is active or passive, we ought to examine a) in accordance with Donagan’s criteria, whether it is an intervention, i.e. whether the event would have occurred, had the agent been passive or physically absent from the scene. Then, b) we are to examine the behaviour’s place in the chain of events in which it is a part. If it is a restoration of an initial condition, it is passive behaviour with regard to a certain outcome, regardless of whether the behaviour causes an event that would not have occurred had the agent been passive or physically absent from the scene, unless someone else had intervened.

4:5 NOVUS ACTUS INTERVENIENS

In this section, I will discuss further the complication pointed out in section 4:1 regarding whether the agent must be aware that he or she has caused a certain event through an intervention in the course of nature in order to be considered as having actively caused it. The moral importance of intending and foreseeing harmful consequences of one’s actions will be postponed to section five.

Consider the following case.

A poisoner orders that a chocolate cake be made. While it is being made, he distracts his cook's attention and adds powdered arsenic to the sugar the cook is about to use. He then engages a parcel service to box and deliver the cake to his victim: whereupon one person takes the order, another collects the cake, another boxes it, and yet another delivers it. After it has been delivered, the victim's servant, believing his master to have ordered it, serves it at supper. Pleased, the victim cuts a slice, eats it, and dies from arsenic poisoning. Obviously it would be absurd for the poisoner to disclaim causing his victim's death by poison; and yet there can be no doubt that his own action in adding arsenic to his cook's sugar only led to his victim's death by a long way of long series of intervening actions: by his cook, by the various employees of the parcel service, by his victim's servant, and finally by his victim himself (Donagan 1977, p. 47).

Donagan claims that, if an agent B breaks in and affects the chain of events started by an agent A, the breaking can be considered either as a case of novus actus interveniens, or A can be considered as acting through B. If B is aware that he or she causes the event intended by A, B performs a novus
actus interveniens, but if B is not aware of this, and A, knowing about B’s ignorance, uses B’s action to fulfil A’s purposes, B does not perform a novus actus interveniens, but is acted through by A.

In order to understand Donagan's argument, it is necessary to understand the concept novus actus interveniens. Donagan writes:

… an agent's state of mind with respect to his deed makes not the slightest difference to how that deed may be correctly described. Whether he is aware or unaware of what its consequences are, whether he would or would not have done it had he been aware of them, whether he is pleased or displeased with them, have no bearing on whether or not those consequences would have followed in the course of nature had he not done what he did (Donagan 1977, p. 43).

This quotation is plausibly interpreted as meaning that, if an agent intervenes in the course of nature, that is, engages in intentional behaviour, he or she has caused an event regardless of whether he or she intends or foresees it, or not. Donagan argues that when one agent acts through another, "[the agent acted through] does not cease to be the agent or the doer of what he does; but because he acts as the agent of the other, that other is also held to be an agent in his action, and the principal agent" (Donagan 1977, p. 47, my italics). He claims that the action of an agent for a principal agent "is imputed to that principal agent as his own deed". Nevertheless, Donagan claims, "in the sequence of events between that complex action and the victim's death, there was no intervening action" (Donagan 1977, p. 48). Thus, "in our example, the victim's butler and the victim himself where taken advantage of in this way, so that they acted as unwitting agents of the poisoner, subserving his purpose" (Donagan 1977, p. 48).

Therefore, the behaviour of the cook, the parcel service staff, the servant, and the victim are not cases of novus actus interveniens according to Donogan. He claims, "... although the adding of the powdered arsenic to the cook's sugar cannot by itself be described as the causing of the victim's death, it was not the poisoner's only action" (Donagan 1977, p. 47). Donagan argues that an agent "may act either in his own person, or by his agents, or partly in his own person and partly by his agents" (Donagan 1977, p. 47).

This conclusion is inconsistent with Donagan’s own claim, “… an agent's state of mind with respect to his deed makes not the slightest difference to how that deed may be correctly described” (Donagan 1977, p. 43). Furthermore, the most natural description is that B, but not A, does cause the event intended by A by breaking the chain of events initiated by A, but that B is not violating any rights, since he or she does not intend, or foresee in any morally relevant sense, the consequences of his or her intervention.
In the end of the following section, I will return to this case and show that the poisoner violates the rights of the cook, the parcel staff, the butler, and the victim, by cheating them in a way that leads to their baking, delivering and eating a poisonous cake. The victim himself is the morally innocent, sole cause of his death, since he broke the chain of events initiated by the poisoner and then broken by the cook, the parcel service staff, and the butler.

Hence, intention and foresight regarding the event caused by an act has an impact on the moral valuation of the act, but does not affect whether a certain piece of behaviour is an intervention in the course of nature, which breaks a chain of event initiated by another agent.

5. THE MORAL IMPORTANCE OF FORESEEING CONSEQUENCES OF ONE’S INTERVENTIONS

I have claimed that it is morally impermissible to actively harm another moral subject, if the harm is intended as a means or as an end, and I have clarified this claim by defending a distinction between active and passive behaviour. The next step is to discuss whether agents, who have actually, with foresight, but without intending harm as a means or as an end, inflicted harm to a rights-bearer, have violated any rights.

In this section, I will sketch a commonly defended answer to this question, and suggest that an alternative view is preferable. Nozick raises the question whether the distinction between intention and foresight is of moral importance (Nozick 1974, p. 37), but he neither clarifies the distinction, nor does he take an explicit stand on the issue. There is no clear textual evidence either for or against the claim that he considers the distinction morally significant.

5:1 WHAT IS THE DISTINCTION BETWEEN FORESIGHT AND INTENTION?

Our first task is to characterize “foresight” and “intention” in a more precise way, and to clarify the distinction between these terms. There is an extensive discussion on this subject. Warren S. Quinn, in his 1989 “Actions, Intentions, and Consequences: The Doctrine of Double Effect” examines the suggestion that one should distinguish between a wide and a “strict” definition of “intention” (Quinn 1989, pp. 336-337). Quinn himself does not
use the expression “intention in the wide sense”, but I believe that Quinn’s point can be made clearer by introducing it. Having a strict intention that a certain event occurs because of one’s intervention means wanting that a certain event occurs because of one’s intervention. If the intervention would be performed without this specific event occurring as a consequence, the agent would consider it, *ceteris paribus*, a worse state of affairs, than if the intervention would be performed and this specific event occurred as a consequence. Having an intention that a certain event occurs as a result of one’s intervention in the wider sense simply means acting intentionally and aware that one’s intervention will produce a certain effect, without wanting that effect.

Quinn gives an example of an agent intending an effect of his or her intervention in the wider sense.

In the Craniotomy Case (CC) a woman will die unless the head of the fetus she is trying to deliver is crushed. But the fetus may be safely removed if the mother is allowed to die […] the doctor in CC does not intend, at least not strictly speaking, that the fetus actually die. On the contrary, we would expect the doctor to be glad if, by some miracle, it survived unharmed. It is not death itself, or even harm itself, that is strictly intended but rather an immediately physical effect on the fetus that will allow its removal. That effect will of course be fatal to the fetus, but is not intended as fatal. (Quinn 1989, pp. 336-337)

In what follows, only strictly intended effects of interventions will be considered “intended”. Effects of interventions that are intended in the wider sense will be considered “foreseen”. I will return shortly to the question regarding the moral importance of the distinction between intending a certain physical effect as a means to an end and intending harm as a means to an end.

5:2 WHAT IS THE MORAL RELEVANCE OF THE INTENTION-FORESIGHT DISTINCTION?

Having clarified the distinction between intention and foresight, the moral importance of foreseeing harmful consequences of one’s interventions remains to be discussed. A commonly defended version of the so-called “Doctrine of Double Effect” claims that it is permissible to inflict harm as a foreseen side-effect, though not as a means or as an end, provided the harm is proportional to the beneficial effects of the act.
Alison McIntyre, in his 2001 article “Doing Away with Double Effect” distinguishes between two meanings of the term “proportionality”, and argues that each interpretation renders different difficulties for a proponent of the Doctrine of Double Effect. According to the first interpretation, “proportionality” means proportionality between the value and disvalue of the states of affairs caused by the action. According to the second interpretation, “proportionality” means proportionality between the reasons for causing the good effect and the reasons against inflicting harm. The problem with the first interpretation is, according to McIntyre, that it turns the Doctrine of Double Effect into a kind of restricted consequentialism.

… as Anscombe points out, the first version of the proportionality condition, which weighs the disvalue of the harmful side effect against the value of the good end achieved, would negate [the Doctrine’s] force by making it a small exception to an otherwise consequentialist view. This version would use consequentialistic reasoning to determine when merely foreseen harms may be brought about to further a good end. This is especially clear if [the Doctrine] is taken to provide a sufficient rather than a merely necessary condition of the permissibility of bringing about harm as a side effect. (McIntyre 2001, pp. 222-223)

According to McIntyre, the problem, as well as the strength, with the second interpretation lies in its vagueness: vagueness is undesirable since it is an obstacle for grasping the content of the principle, but if made more precise, it seems to weaken the moral importance of the distinction between intent and foresight. If we use examples to illustrate cases where a “moral threshold” has been reached, making it permissible to inflict harm, it seems that the intention/foresight distinction looses most of its moral importance:

Once proponents of [the Doctrine] acknowledges that [the Doctrine] must be supplemented by other moral judgements in order to get a complete explanation of the permissibility of a course of action, then they face an important challenge: to show how [the Doctrine] still plays some role when those other moral principles are explicitly formulated. For example, it is not enough that the doctor in the morphine example intends to relieve pain and merely foresees the death; it must also be true, at the very least, that the illness is terminal, that death is imminent, and that the patient or the patient’s family consents. Once all this is spelled out, the sceptic about [the Doctrine] can ask: “Is it really true that under similar circumstances death could not be brought about intentionally in order to cut short the patient’s suffering?” Proponents of [the Doctrine] must be able to show that the justification for causing harm as a side effect would not also apply to causing the same kind of harm, in similar circumstances, as a means to the same good end. (McIntyre 2001, p. 223)
A more promising approach might be to argue that harm inflicted as a foreseen side-effect is morally permissible when *prima facie* negative rights conflict. There are two interpretations of the expression “*prima facie* right”. According to one interpretation, it means a right that is “not actually or really” a right “at all” (Sinnott-Armstrong 1988, p. 99, although he talks about *prima facie* “moral requirements” rather than rights). According to this interpretation, even though there are *apparent* conflicts between rights, on closer inspection, one realises about at least some apparent conflicts, that one of the conflicting “rights” is no right at all.

According to a second interpretation, the expression “*prima facie* right” means a right that is *overridden* by the conflicting right. Both conflicting rights are “actually” and “really” rights, though once conflicting, one yields to the other, stronger right. When discussing conflicts between *prima facie* negative rights, I will assume the first of these interpretations, since Liberty claims that all rights correspond to duties, and vice versa.

What, more precisely, characterizes cases of conflict between *prima facie* negative rights in which it might be permissible to inflict harm as a foreseen side effect? I will examine the following suggestions concerning morally relevant features. First, the conflict may not be caused by either of the parties through an intervention in the course of nature, with foresight of the conflict. Second, harm to at least one of the parties must be unavoidable; regardless of what behaviour the involved parties choose to engage in. Consider the following case:

A is digging a deep ditch. C accidentally drops a heavy shovel into the ditch. At the same time, B stumbles and falls into the ditch. The only way for A to save his or her life is shielding him or herself from the falling shovel with a large, sharp rock. If A shields him or herself with the rock, B will fall on it and get killed. A’s end is merely to avoid being hit by the shovel. B’s death is an unintended, though foreseen, side effect of A’s intervention, and it is not in any sense a means to preserve A’s life, since the shovel, rather than B, is the threat which A intervenes with in order to avoid getting killed. Is it morally permissible for A to shield him or her self with the rock?

Judith Jarvis Thomson has argued in her 1991 article “Self-Defence” that killing a bystander if doing so is necessary in order to save one’s life is morally impermissible, unless there is something about any of the parties that justifies tipping the scale in disfavour of the bystander. I do not find this claim convincing. If there is nothing about *any* of the parties that justifies tipping the scale in disfavour of the bystander, the correct conclusion is rather that even though there is nothing about the bystander that justifies killing him or her, it does not follow that the bystander may not be killed, since
there seems to be no reason to require the threatened individual to sacrifice
him or her self.

Noam J. Zohar, in his 1993 article, “Collective War and
Individualistic Ethics”, has suggested that killing the bystander would be an
act of trading the bystander’s life against one’s own, and that such trading is
morally impermissible. This suggestion seems promising. While defending
oneself against a threat, one is, in addition, deliberately exchanging the
bystander’s life against one’s own, while the bystander does not. This fact, I
suggest, is sufficient to “tip the scale” in favour of the bystander.

Is it morally permissible for A to shield him or her self with the rock
in order to avoid getting killed by B’s falling on him or her, if such shielding
will kill B, who would otherwise survive the fall? Before heading to the
discussion concerning innocent threats, I will discuss an objection to the
claim that harmful or lethal self-defence against intentional aggressors is
morally permissible.

My reason for postponing the discussion of the moral status of
innocent threats is that the results of the discussion regarding the moral
status of intentional aggressors are useful for the discussion of the moral
status of innocent threats.

Shelly Kagan has argued in his 1989 book, The Limits of Morality,
that rights-ethicists cherishing the claim that it is morally impermissible to
use the harm of another moral subject as a means to achieve an end, when
the harm is intended, must accept that killing in self-defence is always
morally impermissible, since one uses and intends the death of the aggressor
as a means to achieve one's survival. According to Kagan, intending harm as
a means or as an end is to “countenance a harm where the agent's reason for
doing so is that the harm is either itself an end of the agent's or a means to
some end” (Kagan 1989, p. 128). Kagan’s definition of “intending” seems,
then, to cover both “intending” and “foreseeing” as I have defined these
terms. I will argue that even though it is correct that harmful or lethal self-
defence always is intentionally using the aggressor’s harm or death as a
means to an end (even though the harm or death is not strictly intended) the
conclusion that harmful or lethal self-defence is morally impermissible does
not follow.

Kagan argues that two kinds of responses to his argument are
possible. One can either argue that the death of the aggressor, if the
aggressor is killed in self-defence, is, though used as a means to an end, not
intended, or one can argue that killing in self-defence is morally permissible
even though the death of the aggressor is used as a means to an end, and the
aggressor’s death is intended. In accepting the latter response, one would
modify the moral side-constraint.

As Kagan notes, both responses bring difficulties. Regarding the
first kind of response, Kagan is right in claiming that the death of the
aggressor is intentionally used to improve one's situation, even though the
aggressor deliberately worsens one's situation. The death of the aggressor is not necessarily strictly intended, even though incapacitating him or her as a threat is strictly intended. Even though the death of the aggressor could plausibly be described as a foreseen side-effect of incapacitating him or her, killing him or her would still be trading the aggressor's life against one's own, as bombing the bridge full of civilians in order to prevent the enemy from getting in position to shoot me would be trading the civilians' lives against my own.

Regarding the second kind of response, Kagan discusses the claim that the aggressor's guilt undermines the constraint. I interpret "guilty aggressor" as meaning "an agent who impermissibly intervenes with an innocent moral subject with the strict intent, or foresight, to harm him or her, either as an end or as a means to an end". If the aggressor's guilt undermines the constraint, killing him or her is, according to Kagan, morally permissible regardless of whether the aggressor is intentionally used as a means to an end or not. Kagan argues against this claim by pointing at the difficulty in finding a reason that is not ad hoc for the guilt's undermining the constraint. Kagan correctly notes that one "... cannot simply assert an exception for the guilty" and that one "needs to show how the exception flows naturally from the account offered of how and why those reasons are normally generated in the first place" (Kagan 1989, p. 135). I will argue that this can be done.

Kagan mentions several possible ways of meeting this challenge. I will discuss only those responses that are relevant for my purposes. Kagan examines the suggestion that we could justify the undermining of the constraint in cases of self-defence where the victim's life is threatened by saying that since the aggressor is "using the victim for [his] own ends", the aggressor's rights are undermined. But Kagan finds this suggestion problematic, since "if I try to harm [the aggressor] it would seem to be just as much the case that I will be using him to further my own ends" (Kagan 1989, p. 136). Kagan claims that we lack an explanation as to why it is permissible for the victim to intentionally use the aggressor's death as a means to an end, while it is impermissible for the aggressor to use the victim's death as an end in itself or as a means to some further end.

I suggest that there are two ways of contesting this claim. The first way is arguing that, in defending him or her, the victim is not using the aggressor as a means in a morally impermissible way, since the victim is removing an obstacle caused by the aggressor that prevents the victim from upholding a condition (his or her survival) that existed before the aggressor intervened with the victim. The second way is arguing that the aggressor uses another moral subject as a means to a greater extent than does the victim, and that this is a valid reason for claiming that killing in self-defence is morally permissible.

In killing in self-defence, one is not using the aggressor as a means to improve one's situation compared to before the aggressor intervened. One
is merely removing an obstacle that prevents one from preserving a condition (one's survival) that existed before the aggressor intervened and altered the condition. Kagan himself suggests, discussing the rights of innocent "shields", that there is a moral difference between intentionally using someone as a means to remain alive, if one would have remained alive had the threat not appeared, and using someone as a means to improve one's situation compared to before the threat occurred. I believe this argument can plausibly be applied to guilty threats, though not to innocent threats, innocent shields, or bystanders. In intentionally killing the aggressor, one is merely upholding the status quo that would remain had the aggressor not intervened; whereas if one intentionally trades the life of another moral subject, which is a shield or a bystander, against one's own life, to uphold the status quo threatened by the aggressor, one is intentionally trading the life of a moral subject against one's own life in order to improve a threatening situation caused by the aggressor.

Through natural causes, an individual can be turned into an innocent threat to another individual, or by intervention by another agent. If the agent causing the individual to be an innocent threat intends to do so, the former is an aggressor to the individual threatened by the innocent threat. Is it morally permissible to kill innocent threats if one does not use his or her death to improve one's situation compared to before the innocent threat appeared? Such killing would be trading the life of another against one's own life, and I suggested above that such trading is morally impermissible.

An argument in defence of the right to lethal self-defence against guilty – not for innocent – threats is available. The attacker deliberately initiates the assault, and in doing so, he or she deliberately places the victim in a situation where the victim's options are strongly reduced in comparison to those of the attacker. In intentionally killing the aggressor, the victim could be considered to be using the aggressor as a means to a lesser extent than the aggressor uses the victim as a means. The aggressor has other means of securing his or her continued survival, while the victim can only secure his or hers by killing the aggressor. This might be a valid reason for claiming that the rights of the attacker are undermined, and it does not apply to innocent threats, shields, or bystanders.

Suppose, however, that the death of a victim B is the aggressor A's only available means to secure A's own survival. Another aggressor C, might claim that C will kill A unless A kills B. What is the justification for B killing A in self-defence even in cases where A must kill B in order to survive? I suggest that B is morally permitted to kill A because A is the initiator of conflict between A and B, and A initiates the conflict for reasons that cannot be morally justified by Liberty. B is not morally required to sacrifice him or her self because A has certain morally unjustified reasons for initiating the conflict. This claim "flows naturally from" Liberty.
Is A morally permitted to kill B, if A is justified in believing that B intentionally and in a morally impermissible way tries to kill A, when B in fact is not engaging in such an attempt? Is A morally permitted to kill B, who intentionally and in a morally impermissible way initiates an attempt to kill A, if A is justified in believing that B is either not trying to kill A, or is morally permitted to try to kill A?

I believe that both questions should be answered affirmatively. In the first case, the action does not fall under the description “killing an innocent moral subject” for the killer; and the killer is justified in believing that it does not fall under such a description. In the second case, the action does fall under such a description for the killer; but, since the killed individual is not innocent in the relevant sense, his or her rights have not been violated.

I sidestep the incredible difficult question whether, and under what conditions, it is morally permissible to kill an individual who intentionally attempts to kill oneself without being at fault for doing so. Though important, this question does not raise any problem to the main argument of this essay.

It should be added that one is morally obligated, to the best of one’s ability, to foresee, and prevent one’s interventions from causing, harm, or death to innocent moral subjects. Inflicting harm or death on a moral subject in ignorance, or due to careless behaviour, is a rights-violation, if the agent inflicting the harm or death could reasonably have remedied the ignorance or carelessness.

Returning to the case involving A, B, C and the ditch introduced above, it is morally impermissible for A to shield him or herself with the sharp stone if B will fall on it, and it is morally impermissible for A to kill B in order to prevent B from falling on and killing A.

5:3 IS IT EVER MORALLY PERMISSIBLE TO INTENTIONALLY INFLECT HARM TO ANOTHER MORAL SUBJECT?

Hitherto, I have discussed interventions with foreseen, harmful side-effects, where it is certain, or almost certain, at the time of the intervention, that the harm will occur. I will now discuss the moral status of interventions that actually bring foreseen, harmful side-effects, and which, at the time of the intervention, posed lower risk to other rights-bearers than in the cases discussed above. I will argue that it is morally permissible to harm another rights-bearer as a foreseen side-effect of an intervention, if the intervention
was necessary in order for the agent to exercise his or her autonomy. Other factors must be taken into account as well, however. At the time of the intervention, the probability of harm must be sufficiently low, and the intervention must be such that it cannot reasonably be considered as intentionally trading the life, autonomy, or wellbeing of another rights-bearer against one’s own. I will refer to these requirements as Requirements for Permissible Harming (RPH).

First, would one prohibit all harmful interventions, one would make it very hard or impossible for at least some people to exercise their autonomy. One would thereby require them to restrict their behaviour to an unreasonable extent.

There are, no doubt, people for whom the exercising of their autonomy depends on their being allowed to engage in harmful activities. An example of such activity is driving a car in inhabited areas, where the car is environmental-friendly and in excellent condition, and where the driver is sober and healthy, driving only on roads constructed for driving, following rules and regulations for driving cars in the society in question. If these conditions are met, driving a car is behaviour of the permitted kind.

All those engaged in driving under those conditions, of course, deliberately expose each other to a risk that is in no way negligible, but for bystanders, the risk of harm is minimal, as long as the bystanders are reasonably cautious.

If a person is restrained from behaving in ways necessary to exercise his or her autonomy in order to protect others from harmful interventions, he or she lacks all opportunities to direct the course of his or her life. Those exposed to such intervention did, at the time of the intervention, retain some opportunity to avoid being harmed by the intervention in question. Since the weighing of people’s right to liberty of action against other’s right to protection from harmful intervention seems unavoidable, RPH seems reasonable.

Second, if the probability of harm is very low at the time of intervention, such behaviour cannot reasonably be considered as intentionally trading the life or wellbeing of another against one’s own life and well-being, since it seems absurd to claim that all everyday activities that pose the slightest threat by the time of the intervention and which actually cause harm ought to be considered as such “trading”. For all of these reasons, such behaviour is morally permitted, if it is necessary in order to exercise one’s autonomy, even in cases where it actually causes harm to another rights-bearer.

If what I have said above is correct, how ought the behaviour of the poisoner, the cook, the staff of the parcel service, and the butler in the example introduced above to be valued morally? The poisoner, though strictly intending the death of the victim, does not cause the death of the victim, since the chain of events leading to the victim’s death is broken by
the cook, the parcel service, the butler, and finally by the victim. But neither
of these agents intends the death of the victim, and neither foresees it. The
poisoner, however, has violated the rights of the cook, the parcel staff, the
butler, and the victim by cheating them in a way that leads to their delivering
and eating a poisonous cake. Such cheating is using them as a means to his
ends, and hence is morally impermissible.

6. CONCLUSION

Supported by a slightly revised version of Donagan’s argument, I claim that
pushing someone into the water so that he or she drowns is a case of active
killing, while watching someone drown without saving his or her life is a
case of passive killing. My reason for making this distinction is the
following: in the first case, where A pushes B into the water, A starts,
through an initiation of change, the chain of events that lead to B’s
drowning. We assume here that this is the first intervention of this kind by
A. Had A’s agency not been activated in this specific way, e.g. had A been
physically absent or passive, B would not have fallen into the water as a
result of A’s activated agency. The second case, however, is different: B
would have drowned even if A had been physically absent or passive.
Donagan’s distinction is theoretically adequate for my purposes, while the
ones suggested by Tännsjö and Bennett are not: Tännsjö’s reliance on
linguistic intuition does not supply a general criterion for a distinction
between active and passive behaviour, and Bennett, though he aims at a
general distinction between active and positive behaviour, does not succeed
in making it precise enough. Finally, Bennett gives the “wrong” answer in
variations of my second case.

I also claim that harmful interventions are morally permissible, only
if they are in accordance with RPH.

In the following chapters, I will apply the conclusions of Chapters
Two and Three to the parent-offspring relation.
CHAPTER FOUR
NEGATIVE RIGHTS IN VIRTUE OF POTENTIALITY FOR AUTONOMOUS AGENCY

1. INTRODUCTION
Having completed the presentation of Liberty, I will now argue that the group of individuals toward which others have negative duties includes potential autonomous agents. Pre-natal organisms, infants, and not yet autonomous children are rights-bearers in virtue of their potentiality for actual autonomous agency. This chapter is structured as follows: In section two, I suggest, in opposition to most rights-ethicists, that potentiality gives individuals negative rights. I discuss an objection to this claim advanced by Michael Tooley, and argue that the objection can be met by formulating a proper characterization of potentiality in the morally relevant sense. In section three, some further rights-based arguments for and against the claim that potentiality gives individuals negative rights are discussed. In section four, I discuss conflicts between the negative rights of the pre-natal organism and his or her parents.

2. A CHARACTERIZATION OF POTENTIALITY IN THE MORALLY RELEVANT SENSE
The thesis to be defended in this chapter is that pre-natal organisms and infants/children have negative rights not to be harmed or killed, in virtue of their potentiality for autonomous agency. Rights-ethicists such as Michael Tooley have denied this claim. In Abortion and Infanticide (1983), Tooley...
points out that objections to abortion, which claim that abortion is wrong because it destroys a potential person must rely on a precise and non-arbitrary characterization of the concept "potentiality" in order to be possible to understand and evaluate. In addition, the characterization must apply to "normal human foetuses" (he uses the term "foetus" as including all pre-natal organisms). Tooley claims that since any of several possible characterizations of potentiality necessarily are either arbitrary or vague, or do not apply to normal human foetuses, this "raises doubts" about the moral importance of potentiality.

Tooley discusses three characterizations of potentiality for personhood: active potentiality, latent potentiality, and passive potentiality. He argues that the concepts "active potentiality" and "latent potentiality" do not apply to the pre-natal organism, and that the concept "passive potentiality", though applying to the pre-natal organism, is either arbitrary or vague.

Tooley characterizes "active potentiality" in the following way:

An entity may be said to have an active potentiality for acquiring some property P if there are within it all of the positive causal factors needed to bring it about that it will acquire property P, and there are no other factors present within it that will block the action of the positive ones (Tooley 1983, p. 167).

It is necessary to clarify Tooley’s distinctions in order to examine his argument, and because I will make use of them. I believe that several difficulties are involved in attempts to formulate a sharp distinction between obstacles "within" and obstacles outside of the pre-natal organism. One of them is determining whether only defects within the pre-natal organism as such ought to be considered as internal obstacles, while defects in the umbilical cord, the placenta, or the circulation of the blood of the mother ought to be considered as external obstacles.

I believe it is reasonable to claim that the umbilical cord and the placenta are parts of the organism for the following reasons: (1) They are carriers of the same genetic code. (2) The rest of the organism develops out of the cells that constitute the umbilical cord and the placenta. (3) At least in the early stages of the organism’s development, removing the umbilical cord and the placenta will deprive it of something that it cannot survive without (unless the umbilical cord and the placenta could be replaced with something that filled their functions). All this supports the claim that the umbilical cord and the placenta are temporary organs of the organism. Therefore, defects in the umbilical cord, the placenta, or the circulation of the blood of the mother ought to be considered as internal obstacles. Since the circulation of the
blood is part of the umbilical cord and the placenta, defects in it are defects within the pre-natal organism as well.

Someone might object that cases of twinning, where two organisms share a placenta, constitute counterexamples to the claim that the placenta is part of the organism, since it cannot be decided which part of the placenta belongs to which twin. But such cases do not undermine my conclusion; Siamese twins sometimes share certain organs, but there is no doubt whether their shared organs are indeed part of them; the organs belong to both.

It seems, however, as if I have only moved the difficulties to another level. How ought the distinction between internal and external factors causing defects of the mother's blood, the umbilical cord, and the placenta to be formulated? If the defects of the blood, the umbilical cord, and the placenta are caused by, for example, drugs, alcohol, or violence, I am inclined to classify such obstacles as internal obstacles of the pre-natal organism, caused by external factors. My reason for doing so is the fact that the damage resulting from such factors is not the result of a normal development of the mother or the pre-natal organism. However, once the pre-natal organism is harmed by such external factors, internal obstacles have occurred.

Tooley characterizes "latent potentiality" in the following way:

It has a latent potentiality if all of the positive factors are present within it, but there is some feature of it that will block the action of those factors (Tooley 1983, p. 167).

Tooley characterizes "passive potentiality" in the following way:

Finally, it has a passive potentiality for acquiring property P if other things could act upon it in such a way as to bring about that it acquires property P (Tooley 1983, p. 167).

Having made these distinctions, Tooley suggests that the claim that a pre-natal organism has active, latent, or passive potentiality is problematic. The pre-natal organism cannot, according to Tooley, be considered as possessing active potentiality or even latent potentiality, since “certain treatment” during pregnancy and childhood is necessary for it to develop into an actual person. Tooley does not explain what he means by “certain treatment”, but it seems uncontroversial to interpret it as “provision of nourishment and a protective environment”.

Tooley discusses the difficulties involved in characterizing potentiality in terms of the concept "passive potentiality", which he
considers to be the remaining option once the applicability of the concepts "active potentiality" and "latent potentiality" has been rejected:

Passive potentialities include cases ranging from, at the one end, 'almost active' potentialities, where almost all of the positive factors are present in the entity, and very little has to be added, through to cases, at the other end, of almost totally passive potentialities, where nearly all of the relevant factors have to be added, and where there is little more than bare receptivity to change imposed from without. To characterize potential persons as entities that have a passive potentiality for becoming persons would have the consequence that random collections of matter that could, with sufficient knowledge and technological advances, be transformed into human organisms, would have to be classified as potential persons (Tooley 1983, pp. 167-168).

Tooley concludes that an attempt to characterize potentiality in terms of the concept "passive potentiality" leaves us with two unattractive options: either we must arbitrarily "pick out a certain range of passive potentialities, toward the active potentiality end of the spectrum, and define the concept of a potential person in terms of that", (Tooley 1983, p. 168) or stay content with "a vague characterization of the range" (Tooley 1983, p. 168). Tooley leaves us with the following challenge: if a characterization of potentiality for being a person necessarily is either precise but arbitrary, or vague, "doesn't this raise doubts with regard to the contention that these notions are morally important?" (Tooley 1983, p. 168)

Even though Tooley discusses distinctions within the concept “potentiality for being a person”, I believe that these distinctions apply to the concept “potentiality for autonomous agency” as well: agency is, according to Tooley, a sufficient (though not necessary) criterion for being a person (Tooley 1983, p. 142). Hence, if an individual is a potential agent, he or she is a potential person. Hence, the criticism above hits the concept "potentiality for autonomous agency" and the concept "potentiality for being a person" with equal force.

I agree that a precise and non-arbitrary characterization of potentiality is necessary in order for arguments relying on an idea of the moral value of potentiality to be comprehensible. I will; however, argue that a characterization of potentiality in terms of the concept "passive potentiality" need be neither arbitrary nor vague. The arbitrariness as well as the vagueness can be avoided by formulating the morally relevant characterization of potentiality according to some normative theory. We ought to detect what properties the normative theory of our choice considers as potentiality in the morally relevant sense. We can then conclude that potentiality in the morally relevant sense occurs at the stage of development of the entity where the properties in question occur for the first time.
This procedure results in a precise and nonarbitrary characterization of potentiality, if the normative theory provides a precise characterization of potentiality, which is not ad hoc. Since the characterization of potentiality is motivated by a certain normative theory, it is no more arbitrary than is the choice of the normative theory itself.

Liberty provides part of such morally relevant characterizations. According to Liberty, certain properties (rights-ethicists differ regarding which these are) of an entity give it rights. The existence of rights presupposes bearers of rights. What entities qualify as bearers of rights? Nozick's suggestion seems to be that the creatures that his theory applies to are organisms (Nozick 1974, pp. 38-39). Potentiality for autonomous agency of an organism occurs at conception. Therefore, potentiality in the morally relevant sense occurs no earlier than the moment of conception.

This claim is not ad hoc. Before conception, there does not exist any physical entity, which can be identified as the same physical entity as the carrier of actual morally relevant properties. Nozick does not explicitly discuss the moral relevance of potentiality. Nevertheless, the claim that a carrier of potentiality in the morally relevant sense must be numerically identical to the carrier of the actual morally relevant properties is a quite natural implication of a theory, which is based on the assumption that certain individuals are inviolable. It seems less controversial to restrict the label “individual” to organisms, than to extend it to other entities as well.

Objections have been raised to the claim that a conceptus is an organism from conception rather than an entity that can give rise to an organism at a later stage of development. In addition, it has been argued that potentiality in the morally relevant sense occurs before conception. I will, in examining the objections in the order stated above, argue that potentiality in the morally relevant sense occurs neither before nor later than conception.

It has been objected by Eric Olson that before the conceptus has attained a certain level of maturity, it is not an organism, but rather material that can give rise to an organism (Olson 1997, pp. 89-93). His reason for claiming this is that the organism "comes into being ... when the cells that develop into the fetus (as opposed to the placenta) become specialized and begin to grow and function in a coordinated manner" (Olson 1997, p. 91). I believe it is reasonable to claim that the umbilical cord and the placenta are parts of the organism, since they could plausibly be considered temporary organs. Other objections have been put forth within the extensive discussion regarding the criteria for personal identity. These objections deny that the organism can ever possess properties characterizing a person, since the organism and the person are numerically different. These objections rely on the assumption that there is a “fact of the matter” whether persons and organisms are numerically different. I believe this is a merely terminological question. I will, in the remainder of the discussion, assume that an organism can possess properties for personhood, or can have potentiality for doing so.
Having argued that an organism occurs no later than conception, I will now argue that there is no entity qualifying as a rights-bearer before conception. The following questions have been discussed thoroughly: Could not an unfertilized ovum and a sperm both be considered rights-bearers? Could not either the unfertilized ovum or the sperm be considered as a rights-bearer? Could not the collection of the unfertilized ovum and the sperm be considered as a rights-bearer?

Jim Stone argues in his 1987 article, "Why Potentiality Matters", that an unfertilized ovum and a sperm cannot both be potential adult human animals. "The sperm and the egg cannot each be identical to the adult human being they produce, for then, by transitivity of identity, they are identical to each other, which is manifestly false" (Stone 1987, p. 816). I believe this is correct. Stone then examines the plausibility in claiming that either the sperm or the ovum is identical to the future adult human animal. Stone correctly notices that this claim faces severe difficulties, since:

... the sperm could have penetrated a different egg producing another zygote. But then, if the sperm is identical to the zygote it in fact produces (as it must be if it is to be identical to the adult the zygote produces), then (by parity of reasoning) the sperm would have been identical to this other zygote too. It follows (again by the indiscernibility of identicals) that the zygote the sperm actually produces is the zygote the sperm would have produced if it had penetrated a different egg. Plainly this is false. It follows that the sperm is not identical to the zygote it produces, but then it is not identical to the adult human animal either. The same reasoning applies to the egg (Stone 1987, p. 816).

Stone then examines the suggestion that the collection of the unfertilized ovum and the sperm is a potential human adult animal, and claims that it leads to bizarre consequences:

... it follows that this animal would have existed if the egg and sperm had found different partners. Given two sperms and two eggs we have four animals, only two of which can survive their initial stages. We are committed to the absurdity that the planet sustains billions of additional animals, each existing in a divided form from beginning to end, its cells having nothing to do with one another ever, and each cell part of countless other animals of the same kind. Plainly the human animal does not exist before conception: my body was once a fetus but never a sperm or an egg. Both the sperm and the egg can produce something which has the potential of becoming an adult human being, but neither the sperm nor the egg has that potential itself (Stone 1987, p. 817).

The following objection could be raised against the claims advanced in the quotation above. One might argue that a collection of an ovum and a sperm
do have rights if isolated and intended for fertilization. The possibility of them finding different partners is then eliminated. This suggestion avoids the problem of multiplied individuals. If such an isolated collection can be considered as a potential agent, it might have rights to the same extent as does the zygote. However, potentiality in the morally relevant sense should not depend on agents’ intentions regarding it. Hence, until fertilization is complete, the collection only consists of genetic material that can be used to produce a potential agent. The collection is not numerically identical to the organism. I conclude that there does not exist an entity, which qualifies as a rights-bearer before conception.

Even if we accept that potentiality in the morally relevant sense occurs no earlier and no later than conception, the existence of an organism is insufficient for potentiality in the morally relevant sense. Potentiality, in addition, depends on the condition of the pre-natal organism. In order for the pre-natal organism to be considered as a potential agent, it must have the capacity for following a path of normal development.

How ought we to understand the concept "normal development"? I will try to provide some narrowing of this concept by discussing a suggestion put forth by Stone in the article referred to above. He characterizes "normal development" in the following way:

Talk of normal development for an entity belonging to a biological kind presupposes the existence of a developmental path determined primarily by the biological natures of members of the kind to which the entity belongs, a path which leads to their adult stage. Further, talk of normal development presupposes that the particular entity in question has the nature sufficient to be the primary determinant of its following a path which leads to the adult stage of members of its kind (Stone 1987, pp. 818-819).

A sperm, an ovum, or a hair-cell (unless cloned) does not possess what Stone calls "strong" potentiality, and cannot develop normally in the sense described above, since they do not have "the nature sufficient to be the primary determinant" of its developing into an actual autonomous agent. None of them are "an instance of a human genetic code" that can be the primary determinant of the entity's developing into an agent. The collection of an ovum and a sperm constitutes the mere material for such instantiation.

The meaning of the terms "primary determinant" is not obvious. A pre-natal organism carries a certain genetic code, which is a necessary but not sufficient factor for the organism's developing actual autonomy. What gives the genetic code the status of "primary determinant" of the entity's developing autonomy? Nourishment and proper surroundings of the organism are necessary factors as well. It seems reasonable to interpret Stone as understanding "primary determinant" as a distinguishing factor: nourishment and proper surroundings are necessary in order for any
biological entity to develop while the genetic code determines at least some distinguishing features of the entity.

John Andrew Fisher argues in his 1994 article, "Why Potentiality Does Not Matter – A reply to Stone", that the paths of development of an organism are indeterminate, not necessarily leading to a "unique and common result". Neither Stone nor Fisher mentions possession of autonomous agency as an example of such a "unique and common result". It seems, however, uncontroversial to claim that possession of autonomous agency is a “unique and common result” of a fulfilled developmental path primarily determined by a human genetic code.

Stone replies in his 1994 article, "Why Potentiality Still Matters", that even though it is "causally possible" for the organism to "follow a range of developmental paths", "one and only one goal-state is determined by the complete expression of the embryo's genetic code" (Stone 1994, p. 285). Consequently, if the pre-natal organism is genetically "pre-programmed" to develop autonomous agency, and it does develop autonomy because it is pre-programmed to do so, it develops normally.

This characterization of “normal development” does not exclude Chimeras, individuals with two genetically distinct types of cells, from the category of individuals who are capable of normal development. The combination of the distinct genetic codes is the primary determinant of the individual’s developing autonomous agency.

There are, however, cases where it seems difficult to determine whether the genetic code is the primary determinant of an individual’s developing autonomous agency. PKU (phenylketonuria) is a disorder of body chemistry that is inherited, and if untreated, or if proper diet is not provided, causes mental retardation. Ought the individual’s genetic make up be considered the primary determinant of his or her developing autonomous agency, or ought the treatment or diet that prevents mental retardation be considered the primary determinant of his or her developing autonomous agency? I tend to believe that the former is correct, at least in cases where a certain diet but no medication is required, since the effects of the genetic disorder are then triggered by external factors. Nonetheless, I do not rest any confidence in this conjecture. I suggest that even though it is, in some cases, difficult to determine, or there is no answer to the question whether the genetic make up is the primary determinant of the individual developing autonomous agency, the problem lies in application of the view advanced in this chapter, but it is not a problem for the view itself.

If genetic manipulation is required in order for the organism to develop autonomy, he or she clearly does not have potentiality in the morally relevant sense. If the organism can develop autonomy if he or she abstains from certain sources of nourishment, which cause allergic reactions, and is provided alternative nourishment, he or she clearly has potentiality in the morally relevant sense. Apart from such clear cases, there is also a range of
cases where it may either be difficult to know, or there is indeed no answer to the question whether a certain organism is potentially autonomous.

This vagueness is acceptable, since the meaning of term “potentiality” is precise enough to enable us to classify most organisms as either potentially autonomous, or not.

Dean Stretton argues in his 2003 article, "The Deprivation Argument Against Abortion", that Stone’s view has counterintuitive implications. According to Stretton, Stone’s view implies that a computer with a "certain internal instruction set" built into it, causing it to develop self-awareness if not intervened with and if provided "certain external materials", will qualify as a rights-bearer. If this were correct not only organisms would be rights-bearers. In order to be a rights-bearer, it would merely be necessary to be an entity that is a carrier of a primary determinant for developing morally relevant properties. I do not find this counterintuitive, but will limit my discussion to organisms from here on.

Identical twins might pose a challenge to the claim that potentiality in the morally relevant sense exists at conception onward because there then exists an entity carrying a genetic code that is the primary determinant of the entity's developing autonomous agency. In case the conceptus develops into identical twins, is it then not reasonable to claim that potentiality in the morally relevant sense of each twin does not exist until the ovum is split? Before the split of the ovum, none of the identical twins exist. Hence, the objection continues, it is morally permissible to abort the pre-natal organism before the split. It seems as if the conceptus merely provides the genetic material to two or more individuals, as do the ovum and sperm before conception. Does it then not follow that the rights of the conceptus are non-existent if it will split into identical twins? The answer to this question depends on whether the unprovoked split is pre-determinate in the genetic code of the conceptus. If it is not, the conceptus has rights until the split is initiated. When the split is complete, the original organism is dead, and replaced with two new organisms. If the unprovoked split is pre-determinate in the genetic code of the conceptus, it merely constitutes genetic material to the future twins, and holds the same moral status as sperm or an unfertilized ovum. A provoked split is always equivalent to killing the organism, and if it were not, at the time of the provoked split, genetically predetermined to split, splitting it is a violation of its rights.

I argued above that the pre-natal organism being an entity with a capacity for normal development toward autonomous agency is a necessary criterion for a pre-natal organism to be a rights-bearer. Is it sufficient as well? I pointed out that nourishment and lack of harmful intervention are necessary in order for the pre-natal organism to develop actual autonomous agency. Non-intervention and nourishment ought not to be considered as being necessarily present in order for the pre-natal organism to be a potential agent in the morally relevant sense. If it would develop autonomy, were it
CHAPTER FOUR

not intervened with, and were it provided nourishment, it is a potential agent in the morally relevant sense. The pre-natal organism nevertheless has rights not to be harmed or killed, and has rights to nourishment necessary for its developing autonomy. This claim requires a thorough defence, which is to be elaborated below. I will now continue my defence of the thesis that the pre-natal organism has negative rights, and discuss its right to aid in the two following chapters.

3. ARGUMENTS FOR AND AGAINST THE MORAL IMPORTANCE OF POTENTIALITY

I will now propose that a strong argument for claiming that sleepers or in other ways temporarily unconscious adults have rights is referring to their potentiality, and that, since pre-natal organisms are similar to such adults in all relevant respects, pre-natal organisms too have rights in virtue of their potentiality.\footnote{Robert Howell has suggested that pre-natal organisms, sleepers, and in other ways temporarily unconscious adults, are similar regarding their possession of capacities. He argues that it is equally permissible or impermissible to kill a pre-natal organism and a sleeping adult (Howell 1973, pp. 407-410).}

Tooley denies that pre-natal organisms as well as sleeping or temporarily unconscious adults possess a property that justifies them having rights to equal extent. He has argued that adult humans who are "temporarily unconscious", in an "emotionally unbalanced state", or who have "been conditioned not to want the thing [e.g. survival] in question" (Tooley 1973, p. 419) are exceptions to the principle that only individuals actually possessing the morally relevant properties ought not to be killed. He argues that the rationale for this exception is the fact that the temporarily unconscious person:

... had a desire to go on living during the interval immediately prior to that in which he is unconscious that makes it a violation of his rights to kill him while he is unconscious. It is this feature that constitutes the central difference between a temporarily unconscious adult on the one hand, and a fetus or newborn baby on the other (Tooley 1973, p. 421).

Tooley claims that it is also morally impermissible to violate certain future preferences of an individual who has, in the past, been an actual person. One
may not expose such an individual to certain behaviours that he or she, in the future, will wish not to have been exposed. It is also, according to Tooley, morally impermissible to harm a potential agent in a way that causes him or her harm in the future, if he or she survives and develops personality. Killing a potential agent is, however, permissible at all times.

Nevertheless, harming or killing an individual who has had certain preferences does not frustrate any preferences that he or she has at the time of the harming or killing. Also, harming an individual who later will have preferences not to have been harmed while unconscious does not frustrate any preferences that he or she has at the time of the harming. However, I agree with Tooley’s saying that if the individual still suffers harm once conscious again, he or she does suffer harm while having preferences not to suffer harm. It is plausible to defend an individual’s possession of rights by referring to an actual property of the individual, such as his or her potentiality for developing certain capacities, rather than referring to properties that the individual has had or would have if allowed to survive. Tooley’s intuitions seem better captured by preference-utilitarian theories, than by rights-theories. My suggestion, however, focusing as it does on the individual’s present properties, fits better with a rights-theory.

I will now leave Tooley’s argument, and discuss other possible objections to my thesis. Someone might argue that a morally relevant difference between sleepers and in other ways temporarily unconscious agents and pre-natal organisms is that if made awake or conscious, the agent would possess the morally valuable property. This is not true of the pre-natal organism. Since the sleeping agent could, in Tooley’s words, be considered as possessing passive potentiality "toward the active potentiality end of the spectrum" his or her rights might be more extensive than the rights of the pre-natal organism. This argument assumes that potentiality can occur to a higher or lesser degree. It also assumes that a higher degree of potentiality in an individual justifies him or her having rights to a greater extent than does an individual possessing potentiality to a lesser extent.

Potentiality in the morally relevant sense exists when the entity would develop toward actual autonomy along a path pre-determined by the genetic code of the entity in question, given certain normal circumstances. It is reasonable to claim that as the entity attains full autonomy, it gradually acquires actual autonomy. It does not make sense to talk about an entity’s having more or less potentiality: either it has potentiality, or it does not.

An argument that might support the claim that a sleeping or in other ways temporarily unconscious person has rights to a greater degree than a pre-natal organism is available. One might claim that the sleeper or in other ways temporarily unconscious person possesses a greater amount of actual autonomy than does the pre-natal organism.

Alan Gewirth has advanced a suggestion to a morally relevant difference between sleepers and pre-natal organisms/infants by claiming that
"A potential agent is not the same as a prospective agent, for the latter already has the proximate abilities of the generic features of action even if he is not currently acting" (Gewirth 1978, p. 141). This claim faces severe difficulties. What does this claim mean? In what sense do prospective agents have capacities? It cannot be that prospective agents, while sleeping or unconscious, have capacity for agency, since they could not, while sleeping or unconscious, demonstrate agency even in the absence of external obstacles. In this sense, they are similar to pre-natal organisms. Consequently, Gewirth must mean that sleepers and in other ways temporarily unconscious individuals will become actual agents. In this, too, they are similar to pre-natal organisms following a normal path of development.

One might argue that prospective agents, though not potential agents, have a dispositional capacity for agency. Such dispositional capacity could be considered as potentiality at a different level than the potentiality possessed by the potential agent; the potential agent has potentiality for acquiring dispositional capacities, while the prospective agent has potentiality for actualizing his or her dispositional capacities. Nonetheless, this difference does not constitute a morally relevant difference between potential and prospective agents, since both have potentiality for actual autonomous agency. It does not make sense to claim that potentiality in the morally relevant sense can occur in degrees.

Someone might respond that even though it does not make sense to claim that potentiality in the morally relevant sense can occur in degrees, the potentiality of sleeping adults differs in kind from the potentiality of a pre-natal organism. Be that as it may, this response is not a convincing objection to my thesis unless supported by explanations as to why potentiality of one but not the other kind renders an individual rights not to get harmed or killed.

Finally, someone might suggest that waking up a sleeping adult requires less time, effort, and resources than making a pre-natal organism autonomous. Even though waking up (some) sleeping agents may require less time, effort and resources than providing (some) potential autonomous agents with resources necessary in order to develop autonomy, this fact does not support the claim that potentiality, which requires more time, effort and resources in order to develop into actuality is potentiality to a lesser degree than potentiality, which requires less effort and resources in order to develop into actuality. And even though it normally requires less time, effort, and resources to wake up a sleeping adult than to make a pre-natal organism autonomous, there are comatose patients who regain consciousness after weeks, months, or even years of effort and expense. Anyone who tries to justify the killing of pre-natal organisms on the grounds that making them.

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2 I owe Bo Petersson for this suggestion.
autonomous takes years and requires loads of effort and resources, must, on pain of inconsistency, allow the killing of comatose patients for these reasons as well.

4. CONFLICTS BETWEEN NEGATIVE RIGHTS

The claim that the pre-natal organism has as extensive negative rights as does an actual autonomous agent may appear problematic in cases where the negative rights of the pre-natal organism appear to conflict with the negative rights of the mother to defend herself against a lethal threat. If the life or health of the mother is threatened unless the pre-natal organism is killed, could the rights of the pre-natal organism be cancelled or overridden? Conversely, the arguments for the impermissibility of killing innocent threats advanced in Chapter Three apply to such apparent conflicts of rights between parents and offspring as well.

The claim that the pre-natal organism has as extensive negative rights as does an actual autonomous agent may also appear problematic in cases where the pre-natal organism will die as a foreseen side-effect of some medical treatment that is necessary to save the mother’s life.

Suppose that the mother is not morally responsible for being in a situation where she must choose whether to die or to kill her offspring. She is not morally responsible if all measures have been taken to prevent the pregnancy from becoming threatening, or for the disease of the mother to occur, and the probability of the conflict occurring was low at the time of conception. The medical treatment is obviously necessary in order to secure the mother’s autonomy. Nevertheless, it seems that the medical treatment is intentionally trading the life of the pre-natal organism against the life of the mother, hence is morally impermissible.

5. CONCLUSION

In this chapter, I have argued that some pre-natal organisms, infants, and children have negative rights in virtue of their potentiality for actual autonomous agency. In the following chapter, I will discuss the suggestion that potential autonomous agents, in addition, have positive rights to means sufficient in order to develop actual autonomous agency.
CHAPTER FIVE

DO POTENTIAL AUTONOMOUS AGENTS HAVE POSITIVE RIGHTS?

1. INTRODUCTION

Having argued in defence of the claim that some pre-natal organisms, infants, and children have negative rights in full in virtue of their potentiality, I will now discuss the following conjecture: These pre-natal organisms, infants, and children have, in addition, positive rights to the means sufficient for their developing full autonomous agency. All autonomous agents capable of fulfilling such positive rights are obligated to do so. Once autonomy is developed and once the agent has been autonomous long enough to have the opportunity to secure his or her future autonomy to such extent that is possible, the agent has merely negative rights. Potential autonomous agents have positive rights in virtue of their vulnerability. Less and less resources are necessary in order to fulfil these positive rights as the organism's vulnerability decreases, and as it attains actual autonomous agency.

In section two of this chapter, I elaborate, and discuss objections to, the conjecture that potential autonomous agents have positive rights in virtue of their vulnerability. In section three, I examine ways of solving apparent conflicts of rights between potential autonomous agents, and between potential and actual autonomous agents. Finally, I conclude that there are difficulties in the position discussed in this chapter, and that these difficulties can be avoided by adopting the view defended in the following chapter.
CHAPTER FIVE

2. ELABORATION OF, AND DISCUSSION OF OBJECTIONS TO, THE CLAIM THAT POTENTIAL AUTONOMOUS AGENTS HAVE POSITIVE RIGHTS IN VIRTUE OF THEIR VULNERABILITY

The aim of this section is clarification, elaboration, and defence of the conjecture stated in the introduction.

2:1 CLARIFICATION AND ELABORATION OF THE CONJECTURE

Notice that the degree of vulnerability does not affect negative rights. A potential autonomous agent's being vulnerable without having been given the opportunity to prevent his or her vulnerability is not the ground for his or her possession of negative rights. The vulnerability is the ground for his or her having positive rights, fulfilment of the positive rights being necessary for his or her being morally responsible for the outcome of his or her life.

Even though it makes sense to claim that more resources are required in order to fulfil the positive rights at early stages of the organism’s development, it does not make sense to claim that killing and harming is morally impermissible at early stages of the organism’s development, but morally permissible once the organism has reached a certain stage of development. True, some types of interventions, which will harm the organism at certain stages of its development, will not harm it at later stages of its development, but the negative rights not to be harmed, regardless of what the harming behaviour is, are equally extensive as long as the organism qualifies as a rights-bearer. The only reason for having negative rights in full is being a potential or actual autonomous agent.

Do senile individuals, who may possess the same capacity for autonomous agency as a potential autonomous agent, have positive and negative rights to the same extent as the potential autonomous agent?

First, provided that the senile individual does not have strong potentiality for autonomous agency, the senile individual has no positive rights, even though others may have obligations to aid him or her due to contracts established while the now senile individual was autonomous. It is, of course, possible to imagine a senile individual who loses his or her capacity for autonomy before he or she has been able to secure future autonomy, though the potentiality of regaining it remains. Such an individual
has positive rights in virtue of being a potential autonomous agent, and has the same positive rights, as does a pre-natal organism, infant, or child possessing the capacities to an equal extent.

Can a senile individual's possession of negative rights be justified? If he or she does not have strong potentiality, the answer is no, since he or she is neither an actual nor a potential autonomous agent.

One may still argue in defence of the impermissibility of exposing such individuals to certain harm by referring to contracts he or she may have arranged for regarding his or her future, non-autonomous existence, which he or she arranged before his or her diminished days. Harming such an individual is equivalent to violating the contract of, and thereby violating the rights of, the autonomous agent he or she once was. This is not saying that an individual who is neither a potential nor an actual autonomous agent has rights.

2:2 RESPONSES TO OBJECTIONS TO THE CONJECTURE

An objection to the claim that potential autonomous agents have positive rights in virtue of their vulnerability is that acknowledging positive rights, even to potential agents, seems ad hoc. Positive rights, it might be objected, have no obvious place in the theory outlined in this essay. My reply to this complaint is that even though libertarianism, as traditionally conceived, has not discussed the rights of children to a satisfactory extent and detail, it seems plausible, and in no way contradictory, to construct a libertarian theory which consists of the idea that potential autonomous agents have positive rights in virtue of their vulnerability. This view only refers to rights, rather than to some version of egalitarianism, as Vallentyne and Otsuka do.

An objection to the claim that only potential autonomous agents have positive rights in virtue of their vulnerability is that actual autonomous agents, at times, are vulnerable as well. What, then, is the morally relevant distinction between the vulnerability of the pre-natal organism, infant, or child, and an actual autonomous agent? The morally relevant distinction consists in the fact that an actual autonomous agent, provided that he or she has been autonomous for a long enough period, has been given the opportunity to prevent his or her future vulnerability, while the pre-natal organism, infant, or child, has not been given such opportunity. An actual autonomous agent who has not been autonomous long enough to prevent his or her future vulnerability, still has positive rights.
3. A PRINCIPLE FOR RESOLVING APPARENT CONFLICTS OF RIGHTS BETWEEN PRE-NATAL ORGANISMS, INFANTS/CHILDREN AND PARENTS

Novel arguments for the impermissibility of harming or killing the pre-natal organism are available if we accept that potential autonomous agents have positive as well as negative rights, while actual autonomous agents have merely negative rights. I will discuss two lines of argumentation, and argue that one of them is more plausible than the other. The first view to be discussed is, as we will see, incompatible with the one advanced in Chapter Three regarding under what circumstances it is morally permissible to harm a rights-bearer. I will, nevertheless, examine its implications. The purpose of doing so is to be able to demonstrate that certain difficulties can be avoided by adopting an alternative view, which is compatible with the view advanced in Chapter Three regarding under what circumstances it is morally permissible to harm a rights-bearer.

The first line of argumentation runs as follows. The pre-natal organism has negative rights in virtue of its potentiality. The parents have negative rights in virtue of their capacity for actual autonomous agency. They are also responsible for the course their lives take, provided their positive rights have been fulfilled during their childhood and adolescence. The pre-natal organism does not carry any responsibility at all. It also has a positive right to means sufficient for developing and establishing autonomy, which is a presupposition for its carrying responsibility in the future. The fact that the pre-natal organism does not carry any moral responsibility, and its having positive as well as negative rights, speaks in favour of the conclusion that the total number of rights of the pre-natal organism cancels the total number of rights of the parents. If, through either harming or killing, the pre-natal organism’s negative rights are violated, the fulfilment of its positive rights are made impossible as well.

Conflicts can, of course, occur between the rights of any pre-natal organism or infant/child and the rights of any autonomous agent. In case of such a conflict, the rights of the potential agent ought to take priority, because of the reasons defended above. In case of conflict between the positive and negative rights of two potential agents: whose rights ought to take priority? Such a scenario is not altogether unrealistic, and several versions of such a case can be produced. I will now discuss a few such cases.

First, imagine two twin pre-natal organisms. It is necessary to remove, thereby killing, one of the organisms, in order to save the other. By
doing so, we will violate one twin’s negative rights, and fulfil the positive rights of the other twin. By killing one twin, we also make impossible the fulfilment of this twin’s positive rights. The removal of one twin may be a means for saving the other, and the one twin’s death is a foreseen side-effect of removing him or her. The removal of one twin may also be a foreseen side-effect of treating the other twin. In either case, if nothing is done, both twins will die, and both twin's positive rights will be violated. It does not matter who is sacrificed and who is saved, for each of the two organisms will survive if the other is removed. Regardless of which course of action is chosen, an equal number of rights are violated: either one negative and one positive right, or two positive rights. Consequently, this conflict cannot be resolved by choosing the course of action that leads to the least number of violated rights.

Nonetheless, it seems that one is, when possible, morally obligated to act in such a way as to minimize the total number of rights-violations. This is equivalent to accepting a kind of “utilitarianism of rights” in cases of conflicts between two or more potential autonomous agents. Accepting the normative view examined in this chapter, this conclusion seems impossible to avoid.

It is necessary to add some qualifications to the claim that we are, in some cases of conflicts between positive and negative rights, morally obligated to act in such a way as to minimize the total number of rights-violations. According to the view advanced above, the positive and negative rights of one potential autonomous agent cancel the negative rights of any number of actual autonomous agents who have been autonomous long enough to have the possibility to prevent his or her future vulnerability. The positive and negative rights of one potential autonomous agent are, however, cancelled by the positive or negative rights of a greater number of potential autonomous agents. The rationale for these claims is that positive and negative rights of potential autonomous agents are equally weighty, since potential autonomous agents have not been given the possibility to prevent their vulnerability. Actual autonomous agents, who have been autonomous long enough, have been given this opportunity; hence, their negative rights are less weighty compared to the rights of potential autonomous agents.

3:1 ARE NEGATIVE RIGHTS LEXICALLY SUPERIOR TO POSITIVE RIGHTS?

In this section, I will discuss the following suggestion. One way of avoiding “utilitarianism of rights” would be to claim that negative rights are lexically superior to positive rights, regardless of whether the bearer of negative rights
is a potential autonomous agent or an actual autonomous agent. One rights-bearer’s negative rights may never be infringed in order to prevent other negative rights from being infringed or violated, or in order to fulfil positive rights. Negative rights can conflict, and if they do, the positive rights will cut the tie. If an equal number of positive and negative rights are infringed regardless of what the agent does, all available behaviours carry the same moral status. If the agent is morally responsible for being in the situation where he or she must make such a choice, all available routes of action are morally impermissible. If the agent is not morally responsible for being in the situation where he or she must make such a choice, all available routes of action are morally permissible, since “ought” implies “can”\(^1\).

What arguments can be advanced by an advocate of Liberty, in support of the claim that negative rights are lexically superior to positive rights? One could argue for this claim by referring to the core principle of Liberty: potential and actual autonomous agents ought to be treated as ends in themselves, that is, they may not be used merely as a means to the gain of others. Now, requiring actual autonomous agents to contribute to the satisfaction of the needs of potential autonomous agents is using the former as a means to the gain of the latter. Suppose that we, nevertheless, accept that some use of actual autonomous agents is morally permissible because such use is necessary in order to fulfil the positive rights, which potential autonomous agents have in virtue of their vulnerability. To what extent may actual autonomous agents be used? An apparently plausible suggestion is that they may not be used in a way that decreases their own capacity for autonomy. The fulfilment of positive rights for a sufficiently long time is a presupposition for an individual to be morally responsible for the course his or her life takes. Conversely, if we claim that it is permissible to decrease the level of autonomy of the agent once he or she has developed full autonomy, there seems to be no reason to claim that it is impermissible to abstain from bringing him or her into the autonomous state in the first place. Hence, either we must reject the claim that potential autonomous agents ought to be brought into an autonomous state, or the claim that autonomous agent’s autonomy may be decreased. Since the claim that we ought to bring the potential autonomous agent into a state where he or she is autonomous is very plausible, we ought to reject the claim that it is permissible to decrease autonomous agent’s autonomy. This may be a strong argument in favour of the claim that negative rights that others not decrease one’s level of autonomy are lexically superior to positive rights.

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1. By the claim that "ought" implies “can”, I mean that the claim that the agent acted wrongly implies the claim that the agent could have avoided to act wrongly. With “could have avoided to act wrongly”, I mean that the agent did not behave in accordance with RPH, as stated in Chapter Three.
But could one not claim that agents are morally obligated to bring potential agents into an autonomous state, even if the former later decrease the latter’s level of autonomy, and argue for this claim by saying that doing so is necessary in order to bring a greater number of potential agents into an autonomous state?

This argument, however, relies on the assumption that it is permissible to treat moral subjects merely as means to the gain of others, and not in any respect as ends. I aim at formulating a principle for morally acceptable use of autonomous agents. A principle that is inconsistent even with the weaker requirement that moral subjects may not be used merely as a means to the gain of others is clearly unacceptable.

Someone might suggest that autonomous agents are required to bring potential autonomous agents into an autonomous state, and then decrease their level of autonomy to the gain of potential autonomous agents, only to such an extent that the deprived individual still can be held responsible for the course his or her life takes. This suggestion seems to avoid the objection that it seems pointless to bring potential autonomous agents into an autonomous state, and then deprive them of their autonomy. Since the deprivation is limited, the deprived individual has still gained greater capacity to direct his or her life, than if he or she had received no support in the first place.

My response to this suggestion is that only agents who have been given the opportunity to remain fully autonomous long enough to secure their future autonomy and prevent their future vulnerability may be held morally responsible for the course their lives take. Hence, the individual’s autonomy may not be decreased at all.

However, if the agent’s level of autonomy is decreased, the agent can rely on his or her previous efforts to secure his or her future autonomy, which will compensate him or her for the loss, either by providing means for remaining autonomous, or to remain in some other state which the “insured” agent prefers.

It seems then, that only the decreasing of autonomy that cannot be fully compensated, e.g., death, is morally impermissible. If so, this seems to be a strong argument in favour of the claim that negative rights that others do not decrease one’s autonomy in ways that no insurance can compensate is lexically superior to positive rights.

However, there are strong arguments in favour of the claim that all deprivations of means necessary in order for the agent to remain fully autonomous are morally impermissible. Forcing agents to rely on their insurance is morally impermissible, since it is in itself a rights-violation: since the agent is actively placed in circumstances that he or she cannot avoid.

Even though it is morally acceptable to deny the autonomous individual all aid except the one provided through insurance, it is morally
unacceptable to disable the individual by limiting his or her freedom of action just because he or she has insurance that will secure some, but not all, of his or her autonomy. Permitting such disabling would be equivalent to forcing the individual to adapt to living under the threat of being so used to the gain of others. Such adaptation would involve buying more expensive insurance policies than the ones the agent would buy if the threat did not exist. I conclude that all deprivations of means necessary in order for the agent to remain fully autonomous are morally impermissible. Hence, there are strong arguments in favour of the claim that negative rights that other agents do not decrease one’s autonomy are lexically superior to positive rights.

When applying this principle to the twin-case discussed above, we see that agents are morally prohibited from killing one twin in order to save the other, even if both twins will die anyway.

I have hitherto assumed that the parents are not morally responsible for being in this kind of situation. Now suppose that, in the conflicts discussed above, the parents are morally responsible for being so situated. They are then acting wrongly in causing themselves to be in such a situation, but once the situation has occurred, they ought nevertheless to let both twins die.

In the following chapter, I will argue that this counterintuitive implication can be avoided, and that a potential autonomous agent’s right to aid can be accounted for in terms of merely negative rights. Such responsibility, I will argue, befalls only the child’s own parents.

4. CONCLUSION

In this chapter, I have examined the conjecture that potential autonomous agents have positive rights in virtue of their vulnerability. I argued that negative rights that others do not decrease one’s level of autonomy are lexically superior to positive rights, and noted that this conclusion carries a counterintuitive implication. This implication can be avoided by adopting the view defended in the following chapter.
CHAPTER SIX

THE NECESSITY OF PARENTS
ENSURING THEIR OFFSPRING'S
AUTONOMY IN ORDER TO AVOID
VIOLATING NEGATIVE RIGHTS

1. INTRODUCTION

Having discussed the conjecture that potential autonomous agents have positive rights in virtue of their vulnerability, I will now argue that potential autonomous agents’ rights to means sufficient for developing autonomous agency can be defended in terms of merely negative rights.

The chapter is structured as follows. In section two, I suggest that the principle saying that agents have an obligation to intervene in order to prevent their previous intervention from causing harm, is a principle about a negative obligation, and that it gives the following implications when applied to the parent-offspring relationship. Parents, who, with intention or foresight, caused the existence of their offspring, are morally obligated to ensure that the offspring are provided means sufficient in order for the offspring to develop autonomous agency. Otherwise, they have not prevented the harmful consequences of causing the offspring to exist, and they have thereby actively and impermissibly harmed him or her.¹ In section three, I discuss ways of resolving conflicts of rights between potential autonomous agents and actual autonomous agents. In section four, I summarize the conclusions of the chapter.

¹ Doris Gordon, in her 1995 article “Abortion and Rights: Applying Libertarian Principles Correctly”, outlines a suggestion according to which parents owe their offspring positive duties to aid, since they have “endangered” their offspring by causing him or her to exist.
2. THE NECESSITY OF ENSURING PROVISION OF SUPPORT IN ORDER TO AVOID VIOLATING NEGATIVE RIGHTS

In this section, I will defend two claims. First, I will argue that parents have an obligation to ensure that their offspring has access to means sufficient in order for the offspring to live a life that is better than non-existence for him or her, and that this obligation is negative. Second, I will argue that parents are, in addition, morally obligated to ensure that their offspring has access to means sufficient for developing full autonomous agency. This obligation, too, is negative.

I see at least two ways in which we benefit from explaining the obligation to support merely in terms of negative obligations. First, such an explanation is simpler than explaining it in terms of both positive and negative obligations. Second, the obligation to support can be described as an implication of the principle that harm may not be inflicted, with intention or foresight, to certain individuals, rather than being an intuitively plausible complement to the theory. The result is a more coherent theory.

Two active interventions can sometimes be considered as "adding up" to passive allowance of a certain event. An example of this is the following. Physician A makes a drip, which was set by another physician B, run too fast, but slows it down before the patient is harmed, thereby recreating the conditions that existed before A’s initial intervention. A has then allowed the patient to remain unharmed; A is passive in relation to the condition of the patient. Making the drip run too fast would have become an act of harming the patient, had the potential effects of it not been prevented by slowing down the drip.

Could one claim that a case where parents who, with intention or foresight, cause the existence of their offspring and then neglect it until it either lives a life that is not worth living for it, or dies: is analogous, in all morally relevant senses, to a case where a physician, with intention or foresight, makes a drip run too fast without slowing it down before the patient is harmed or dies?
2:1 CAN ONE HARM AN INDIVIDUAL WHO IS NOT IDENTIFIABLE AT THE TIME OF THE ALLEGEDLY HARMFUL INTERVENTION?

One complication in giving an affirmative answer to this question is that it seems problematic to claim that one can harm an individual by causing him or her to exist, since the intervention inflicting harm on the individual is performed before he or she exists. Hence, the individual is not identifiable by the time of the intervention: it seems that there is, at the time of the intervention, no particular individual whom can be referred to as “the individual who is harmed by the intervention”.

Nils Holtug, in his 1996 article, "In Defence of the Slogan", and in his 2001 article, "On the Value of Coming into Existence", has argued in defence of the claim that one can harm an individual by intervening before he or she exists. I understand Holtug as claiming that one can do so by intervening before the individual exists, in a way that will inflict harm on the individual when he or she comes into existence.

One example would be a woman being on medication while conceiving. The medical substance in her body inflicts harm on the pre-natal organism. We assume that the mother could have conceived the individual without the medical substances in her body. While conceiving, she knows that she might initiate a chain of events leading to the existence of some harmed individual, even though she does not know the identity of the future individual. Holtug claims, "... in order to benefit or harm a person by performing an act, the person benefited or harmed does not have to be identifiable when the act is carried out, but merely when the benefit or harm occurs to him or her" (Holtug 1996, p. 76). This, Holtug believes, suffices in order for the identifiability condition to be met. He argues for this claim by pointing at obvious examples of harming, where the victim is not identifiable at the time of the intervention: if hiding a pin on a seat, the first person to sit on it will be harmed, and he or she is not necessarily identifiable at the time when the pin was placed on the seat (Holtug 1996, p. 76, example originally from Hare 1988, p. 218).

It is obvious that such behaviour is morally impermissible according to Liberty. Nonetheless, condemning such behaviour does not suffice in

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2 The claim that the individual, who will, in fact, suffer harm when existing is not identifiable at the time of intervention can be interpreted in two ways. It can be interpreted as meaning that we cannot know the identity of the future harmed individual, or it can be interpreted as meaning that the future harmed individual’s identity is not determined, at the time of the intervention. (Holtug 2001, pp. 368-369)
order to establish my thesis that bringing an individual into existence and neglecting him or her until he or she lives a life that is not worth living for him or her, or dies, is morally impermissible. The mother using medication before conception actively inflicts harm on an existing organism, which otherwise would have remained unharmed. This is not the case when the mere act of conceiving an individual (without aiding him or her) constitutes the harmful intervention.

In the following section, I will defend the claim that the mere act of conceiving an individual with certain properties can actively harm him or her. I will then use the conclusions of this discussion to defend the claim that the act of conceiving an individual without providing him or her means sufficient in order to develop autonomous agency can actively harm him or her.

2:2 CAN ONE HARM AN INDIVIDUAL BY BRINGING HIM OR HER INTO EXISTENCE AS GENETICALLY DEFECTED?

I understand Holtug as claiming that one can also inflict harm by causing the existence of an individual who is so genetically defect that his or her life is not worthwhile for him or her. Holtug claims that if the individual, if brought into existence, would prefer non-existence to existence, being brought into existence harms him or her. This claim is controversial from most rights-ethicists’ point of view.

In his 1992 book, *Genethics: Moral Issues in Creation of People*, David Heyd puts forth the following objection against the claim that existence can be worse for an individual than non-existence:

The inclination to avoid comparisons in wrongful life cases is not only motivated by the fact that nonexistence is not a state that can be given a value, but also because it is not a state that can be attributed to a subject. It is hardly a 'state' at all (Heyd 1992, p. 30).

According to Heyd, we must be able to attribute the state of non-existence to the child as well as the state of existence, in order to be able to compare the value of the child's existence (for him or her) with the value of his or her non-existence (for him or her). However, being in a state is a relation, and one of the relata, the child, is missing if the child does not exist. In addition, it must be possible to ascribe a value to the state of non-existence as well as to the state of existence. Holtug objects:
Of course, existence is not a property of a person, but a condition for having properties. However, this does not prevent us from claiming that this particular (harmed) child might not have existed. In doing so, we are referring to him. We are imagining *him* not existing. Again, there is no problem of identifiability. It is not metaphysically mysterious that we are comparing the two alternatives regarding *him*. Nor is there a metaphysical mystery as to what is going on in the two alternatives to be compared (Holtug 1996, p. 76).

Note that, according to Holtug (2001), the comparison does not presuppose the child's existence, even though he thought it did in his 1996 article. It suffices for his purposes to argue that *had* the child existed in certain circumstances, existence *may* have been worse for him or her than non-existence. *Had* the child come into existence, the relation *would* have occurred (Holtug 2001, p. 362, p. 375).

Holtug's way of characterizing harm does capture something that is of moral importance, even though such characterization of harm is more allowing than what is common; we *usually* consider infliction of harm as infliction of harm to an already existing individual.

Endorsing Holtug's reply to Heyd's objection, I will now turn to the issue regarding whether the alternatives of non-existence and existence are evaluatively comparable. Holtug's view seems to be that whatever value one chooses to compare the alternatives existence and non-existence with regard to, one can only harm an individual by bringing him or her into existence if his or her life does not consist at least of an equal amount of the value in question, compared to if he or she had not been brought into existence (Holtug 2001, p. 366).

Heyd denies that one can harm an individual by causing him or her to live a life with negative value, since he believes that non-existence cannot be ascribed a value: "... value is always *for* human beings; it has to do with what they – in the broad sense – want or need" (Heyd 1992, p. 84). A non-existent individual cannot possess the properties of wanting or needing, and, hence, his or her non-existence can have no value for him or her.

Holtug argues that two requirements must be met in order for us to be able to compare two alternatives: (1) we must *understand* what the two alternatives involve, and (2) we must have a *preference* regarding the two alternatives. According to Holtug, understanding the alternative non-existence is not a problem, since:

I understand what my existence involves and also that I might not have existed and what that involves. In particular, I understand that if I had not existed, nothing would have been of value to me. When saying that nothing
would have been of value to me, I am not ascribing a property to myself in a possible world in which I do not exist. Rather, I am saying that there are certain properties that I would not have. This presupposes that I can refer to myself, but not that I exist in this possible world (Holtug 1996, p. 78).

Holtug plausibly suggests that the child lives a life worth living (to him or her) if the child would prefer existence rather than non-existence, if the child were in a state of capacity for a qualified choice, that is, his or her preferences were “self-regarding and rational”, and would “survive full (or ideal) information about its objects” (Holtug 2001, p. 365).

2:3 CAN ONE HARM SOMEONE BY BRINGING HIM OR HER INTO NON-AUTONOMOUS EXISTENCE?

I take Holtug's argument to be not only correct, but also consistent with Liberty. However, my problem differs from Holtug's. In contrast to Holtug, who seems to discuss cases where only two options are available to the individual: non-existence and (for example) existence as genetically defect, I discuss cases involving individuals for whom three alternatives are available: non-existence, non-autonomous existence, and autonomous existence. If the individual is provided means sufficient for developing autonomous agency, he or she has the capacity to do so.

I will argue that in cases where the individual brought into existence is a potential autonomous agent, parents are morally obligated to ensure their offspring's having access to means sufficient for developing autonomy. Once autonomous, the individual is capable of evaluating the options non-existence, non-autonomous existence, and autonomous existence, and to shape his or her life in accordance with his or her preferences. If an individual, who would consent to non-autonomous existence if allowed to develop autonomy, is not allowed to develop autonomy, his or her rights are not violated. However, in order for us to know what his or her qualified preferences are, he or she must be provided means sufficient in order to develop autonomy.

Consequently, parents are morally required to temporarily harm the self-ownership of their offspring, should such harm be necessary in order to secure the offspring's future attainment of autonomy (e.g. give the offspring a painful injection against his or her will in order to avoid future disease).
2:4 ARGUMENTS IN FAVOUR OF THE CLAIM THAT PARENTS ARE MORALLY OBLIGATED TO ENSURE THEIR OFFSPRING HAVING ACCESS TO MEANS SUFFICIENT FOR DEVELOPING AUTONOMY

The adequacy of the claims above are realised by considering the following case. A and B are both autonomous agents. A forcibly put B on a desert island without means sufficient for B to remain autonomous on the island. A then leaves the island, and B is unable to sustain his or her autonomy.

In this case, Liberty says that A has impermissibly harmed B through an intervention in the course of nature, and that A has done so by placing B in harmful circumstances B cannot avoid. This case seems similar in all morally relevant senses to the case where parents conceive an organism and after the birth of the organism refuse it means sufficient to develop autonomy.

It might be objected that the two cases are not analogous. When forcibly putting a previously self-sustaining individual on a desert island, one is worsening his or her situation compared to the situation he or she was previously in. If one causes the existence of an individual, and he or she is given a life that he or she prefers to non-existence, even though not provided resources sufficient to develop full autonomy, one has not worsened his or her situation.

I do not dispute that the cases differ in this way. Nonetheless, they share one feature, which renders both cases rights-violations. In both cases, a rights-bearer is the subject of the active exercise of power, which severely restricts his or her freedom of choice. Such exercise of power is a rights-violation, regardless of whether the subject of it prefers being so treated to being in some even worse situation, or to not existing.

Someone might object that the two cases could not plausibly be described as the active exercise of power, which severely restricts the individual’s freedom of choice, since in neither of the cases are others restrained from rescuing the individual.

However, the fact that the individual is either coercively placed, or caused to exist, in a situation where he or she is forced to rely on some third parties aid in order to remain or become autonomous, could plausibly be described as active exercise of power, which severely restricts the individual’s freedom of choice.

A complication can be illustrated by the following case. A conceives B, intending and foreseeing that A will provide for B until B has developed
autonomy. Once B is born, A no longer intends to provide for B. Can an advocate of Liberty claim that A has violated B's rights? If so, by which intervention did A violate B's rights? While conceiving B, A had no intention to desert B. Once B is born, A, foreseeing, but not intending B's death, merely allows B to die. It might be argued that the violation of B's rights consists in the combined behaviour of intervening and not preventing the harmful consequences of the intervention. However, there seems to be no intention behind such combined behaviour.

A possible solution is that in cases such as the one described above, one can violate an individual's rights without intending harm while intervening, if the harm is foreseen or intended, and preventable, when occurring, hence qualifying as indirectly intended harm.

If one is neglecting one's offspring, and someone else steps in and provides the child means sufficient in order to develop autonomy, one has not violated the child's rights. However, even in such cases, the parents carry full moral responsibility for harm due to others' neglect, as well as partial moral responsibility for another's actively inflicting harm on the child.

Someone might object that the suggested characterization of morally impermissible infliction of harm is too wide to be plausible. If we claim that causing a potential or actual autonomous agent to exist in circumstances where his or her freedom of choice is severely limited unless aided by a third party, is a case of morally impermissible, active exercise of power, we might be forced, on pain of contradiction, to condemn as morally impermissible behaviours that are not morally impermissible according to Liberty.

Consider the following scenario: A, living her life according to libertarian principles, engaging in mutually deliberate cooperation with others, without violating any contemporary individual's rights, foresees that her behaviour will place restrictions on some future potential or actual autonomous agent B's opportunity to earn a living. The future potential or actual autonomous agent is not a forthcoming offspring of A. A could, for example, agree with others not to cooperate with B, whose identity is yet unknown, thereby ensuring the future individual B's inability to support herself. Such an agreement could be of several different kinds. A, and the individuals whom A agrees with not to cooperate with B could be business associates, or A could be the owner or executive of a company, who attracts more customers than others, the owner or executive thereby directly or indirectly agrees with the customers that the customers use his or her products or services rather than others'.

In such cases, A's behaviour seems to meet the requirements of a rights-violation in the sense described above. A deliberately intervenes in a way that he or she knows will severely restrict the freedom of choice of an individual who is identifiable in the sense described above.

Yet, agreeing with others not to cooperate with a certain individual is not considered morally impermissible according to Liberty. Are there any
morally relevant differences between agreeing with others not to cooperate with a certain individual and causing an individual to exist in circumstances where his or her freedom will remain severely limited due to other’s unwillingness to cooperate? I believe there is. B’s parents have *actively* caused B to exist in an environment where others choose to *abstain* from *aiding* B by cooperating with B. A has not prevented A’s associates from cooperating with B by intervening in a way that incapacitates the associates, and neither A nor A’s associates have intervened in a way that incapacitates B. B is no worse off compared to if A and/or A’s associates had not activated their agency at all. If foreseeing or intending B being in such circumstances, B’s parents are morally responsible for the harm inflicted on B; they caused B to exist in these circumstances. Had they not caused B to exist, B would not have been harmed. If they did not intend or foresee B’s being in such circumstances, neither they nor anyone else is responsible for B suffering harm.

Consequently, I take it that the identifiability condition can be met without making one's condemning behaviour morally permissible according to Liberty.

If the parents cause the existence of a child on a desert island, support their offspring until he or she is autonomous, and leave their offspring alone on the island without the offspring's being able to sustain autonomy, is such behaviour not equivalent to causing a potential autonomous agent to exist in lethal circumstances? Is not the parents’ obligation to support a life-long commitment in all cases where such support is necessary in order for the offspring to remain autonomous? I admit that in such rare cases the parents do have an obligation to secure the offspring's autonomous existence for the rest of the offspring's life.

Another interesting complication is the following. Is it morally permissible to cause the existence of a potential autonomous agent, knowing that he or she will probably die a premature death from an inherited disease? If the individual, once autonomous, will not object to being brought into existence, bringing him or her into existence does not consist a rights-violation. If he or she will object to being brought into existence, bringing him or her into existence does constitute a rights-violation.

Someone might object that causing him or her to exist in such circumstances is an active exercise of power, which determinately restricts his or her freedom of choice, and hence is morally impermissible. Not so. Since he or she cannot live a life of normal length regardless of what resources and treatments are provided, bringing him or her into existence does not restrict him or her compared to some other available situations. Rather, it is giving him or her opportunities to develop into actuality his or her limited potential as much as possible.

I have hitherto assumed that the individual is capable of evaluating his or her life as a whole, and that it was not wrong to bring him or her into
existence, if he or she prefers existence to non-existence, and is provided means sufficient in order to develop full autonomy. However, the individual may have conflicting preferences during his or her life, and may, due to human cognitive shortcomings, be unable to assess his or her life as a whole. This epistemic difficulty does not constitute an objection to the argument developed in this chapter. Even though it may, in some cases, be impossible to know whether or not a life is worth living for an individual, there is indeed a fact regarding whether his or her life is worth living for him or her.

A further complication is the following. Suppose that a couple convinced by libertarianism lives in a welfare state. This means that they are forced to contribute to the welfare of others, and additionally that they cannot avoid taking advantage of others being forced to contribute. To the best of their ability, they try to avoid taking advantage of others being forced to contribute, and they strive at affecting the political agenda in a more morally defensible direction. Neither of these attempts is successful.

The libertarian couple wish to bring a child into existence. Their income is low, and they would not be able to provide the child means sufficient in order to develop autonomous agency. The society will continue to be a welfare state for a very long time. Therefore, the child, even if abandoned, will be provided means sufficient in order to develop autonomous agency. It will be nourished, treated when ill, and educated by means of taxes. The question is whether conceiving a child and letting the welfare state provide for its needs violates the rights of the taxpayers. We assume that the child being supported by society does not affect the tax-level. We also assume that not all other individuals who are required to pay tax agree to contribute to abandoned children's developing autonomy. (If all agreed, the child being provided by such deliberate payment of tax – which would be forcibly collected if resisted – would be on par with the child being provided for by private initiatives). I believe conceiving the child and allowing it to be provided for by so-called common means, under circumstances where some individuals do not agree to pay tax to contribute to abandoned children's developing autonomy, would be morally permissible, since neither the child nor the parents have violated anyone's rights by doing so. Rather, those responsible for the confiscation of property should be considered as behaving in a morally impermissible way in collecting other's property for such purposes.

There are additional arguments in favour of the claim that the couple is morally permitted to allow the child to be provided for by means of confiscated property, since their property has been confiscated as well. If the sum of their confiscated means cover the costs of the means provided the child, and provided they have taken advantage of none of the societal

3 I am grateful to Sofia Jeppson for pointing out this complication.
benefits paid for by their confiscated resources, it might be reasonable to agree that they have paid the child's way already.

3. A PRINCIPLE FOR RESOLVING CONFLICTS OF RIGHTS BETWEEN PRE-NATAL ORGANISMS, INFANTS, CHILDREN AND PARENTS

I will now return to the cases of apparent conflicts of rights between potential and actual autonomous agents discussed in the preceding chapter.

Forced pregnancies threatening the mother's life or health clearly qualify as cases where the mother's removal of the pre-natal organism from her body without inflicting physical harm to it, or her neglecting the infant or child after birth, does not violate the pre-natal organism, the infant, or the child's negative rights. Since the conception does not involve any action on the part of the mother, she has not, in case she neglects it before or after birth, actively caused a potential agent to exist in lethal circumstances. The pre-natal organism, infant, or child's death is not the result of her abstaining from preventing harmful consequences of any active intervention of hers. It follows from Liberty that she is morally permitted to remove the pre-natal organism from her body, at least provided the removal does not inflict physical damage on the pre-natal organism other than the damage due to its lacking nourishment and a protecting environment.

Such removal is analogous to her throwing out an uninvited stranger who is thrown into her home naked on a cold winters day, and who is having seizures, which turns him or her into an innocent threat. She is morally permitted to throw him or her out, even though he or she might freeze to death, but she may not shoot or stab the stranger before she throws him or her out, if removal is possible without infliction of physical harm. (I assume here that the stranger does not prefer to be shot or stabbed to death rather than being thrown out in the cold again, and that the pre-natal organism would not, if he or she was in a qualified state, prefer to be actively killed rather than abandoned)

If this is correct, she is not morally permitted to actively kill the organism before or after birth if removal without infliction of harm is possible, even if the pregnancy results from rape. Her duties toward a potential agent resulting from rape are equal to her duties toward any other potential agent whose existence she has not intentionally caused.

What, though, if it is impossible not to inflict physical harm when removing the stranger from one's home, or the pre-natal organism from the mother's body? Is removal still morally permissible?
If the conclusions of the discussion on self-defence in Chapter Three are correct, it seems that the claim that abortion can be considered as an act of morally permissible self-defence is false, since the pre-natal organism cannot be considered as a voluntary aggressor. Its mere presence threatens the mother's life, but it is not morally responsible for doing so. It seems, rather, that the parents are playing the parts of aggressors, while the pre-natal organism is the victim.

I will examine these claims through application of the principle of self-defence formulated in Chapter Three to two kinds of pregnancies: (1) pregnancies that are voluntary, and (2) pregnancies that are involuntary.

(1) Voluntary pregnancies. The pre-natal organism can never be considered a voluntary initiator of conflict, but the mother can. Does that mean that she behaves morally impermissibly while acting as a voluntary initiator of conflict? The mother does not improve her situation compared to before the pregnancy threatened her life by killing the pre-natal organism. She merely intentionally uses its death as a means to recreate the conditions existing before the pregnancy became threatening. She intentionally uses the pre-natal organism's death as a means to a greater extent than the pre-natal organism intentionally uses hers in case of uninterrupted pregnancy. For that reason, I think it is reasonable to consider her as the initiator of conflict, and the pre-natal organism as the victim.

Additionally, if one voluntarily causes someone to turn into a threat to oneself, one may not kill him or her in order to remove the threat.

Finally, a third argument is available for an advocate of the view defended in this chapter. If one voluntarily causes a rights-bearer to exist, one is morally obligated to provide him or her the protection and nourishment of one's body during pregnancy. This obligation holds even if such provision requires sacrificing oneself.

However, the issue is further complicated by the fact that voluntary, life-threatening pregnancies can be of two kinds. The first kind of case is where the pre-natal organism, if not actively killed, will be delivered alive if the mother is allowed to die. The argument above applies to such cases. The second kind of case is where the pre-natal organism must be killed if the mother's life is to be saved, but where the pre-natal organism will die as well if the mother is allowed to die. In such cases, the pre-natal organism, if actively killed, is used as a means to improve the mother's situation. If the pre-natal organism is allowed to die with the mother, the pre-natal organism, although not actively killed, is caused to exist in lethal circumstances. Hence, in such cases, the pre-natal organism's rights are violated regardless of whether it is actively killed or allowed to die.

The discussion regarding what consequences of the mother's interventions she is morally obligated to foresee and prevent is relevant to this discussion. A plausible solution seems to be the following. Even if the parents are not morally responsible for the occurrence of the threatening
pregnancy, it is morally impermissible to shorten the offspring’s life by actively killing him or her. The fact that a rights-bearer will die soon anyway does not justify shortening his or her life even sooner. Nonetheless, they do not behave wrongly in allowing him or her to die. The rationale for this claim is that the parents could not reasonably have foreseen the scenario, and since “ought” implies “can”, they do not act wrongly, when they, through no fault of their own, find themselves in a situation where they cannot protect their offspring from being harmed.

If the parents are morally responsible for the occurrence of the threatening pregnancy, they acted morally impermissibly by causing their offspring to exist, without being able to prevent the harmful consequences of the conception. Here, it is even more obvious that they ought not to shorten the offspring’s life even further by actively killing it.

The cases to be discussed in the section below are all assumed cases where the removal of the pre-natal organism is a means to save the mother’s life, and where it will be delivered unharmed if she is allowed to die.

(2) Involuntary pregnancies. The issue becomes more complicated when we turn to the various cases of involuntary pregnancies. We can distinguish three sub-classes: (2a) pregnancies that are the result of external force (e.g. rape), where intercourse as well as pregnancy is involuntary, (2b) pregnancies that are the result of failing contraceptives, where intercourse is voluntary but the pregnancy is involuntary, and (2c) conceptions that are involved in voluntarily without contraceptives, but where the resulting pregnancy is unwanted. (2a) And features of (2b) can, of course, appear in combination, through rape where the rapist uses failing contraceptives).

In the case of (2a), we have three possible aggressors: the rapist, the woman, and the physician performing the abortion. First, we ought to consider the moral responsibility of the woman. She is doubtless placed in a situation through no fault of her own. The crucial question is whether, when placed in a situation where the only two options are either sacrificing one's own agency or violating the rights of an innocent rights-bearer, one is morally permitted to violate the rights of the innocent rights-bearer? Violating his or her rights would be equivalent to using another moral subject in order to improve a situation caused by an aggressor, and I claimed in Chapter Three that such a violation is morally impermissible. Should we apply this conclusion to cases of rape, or are there other morally relevant factors present in the case of rape that are not present in other kinds of violations?

I cannot think of any such difference. The moral responsibility of the rapist has already been mentioned to some extent. He has violated the rights of the woman. Is he thereby morally responsible for the result of any of the two possible choices available to her? If she chooses to give birth to the child and doing so damages her physical or mental health, is he morally responsible for the harm? One could argue that he is not, if she is morally
permitted to remove the pre-natal organism. The rapist would, however, be morally obligated to compensate her for the incursion involved with the removal of the pre-natal organism. The moral status of the rapist's intervention seems partly to depend on whether the removal of the pre-natal organism is morally permissible even though the woman was placed in a situation where the choices are limited. If the removal of the pre-natal organism is not morally permissible, the rapist is morally responsible for harm on the woman caused by her carrying the organism full term, though not morally responsible for the death of the pre-natal organism in case of abortion, since the woman has intervened in a morally impermissible way. I have suggested that removal of the pre-natal organism is morally impermissible, since it is the killing of an innocent threat.

The only remaining option for arguing that the rapist is morally responsible for the death of the pre-natal organism in cases of abortion after rape is arguing that: when placed in a situation through no fault of one's own, where one is forced to choose between sacrificing one's own autonomy or violating the rights of an innocent, threatening rights-bearer, one is permitted to use the innocent threat as a means to improve a situation caused by a voluntary aggressor. Since I have been unable to detect any morally relevant differences between cases of rape and other cases of violations, I conclude that the rapist is morally responsible for all harm on the woman due to the rape (including her death as a result of the pregnancy), but not for the death of the pre-natal organism in case of abortion.

The moral responsibility of the third party, the physician, needs a comment. There is an extensive discussion in the literature regarding the permissibility of acting on behalf of another agent in cases of abortion. In a well known passage in her 1971 article, "A Defence of Abortion", Judith Jarvis Thomson argues that if it is permissible for a woman to remove a pre-natal organism in case the pregnancy threatens her life, it is permissible for a third party to assist her in removing the pre-natal organism. Analogously, one could argue that if it is morally impermissible to remove a pre-natal organism even if the pregnancy threatens her life, it is morally impermissible for a third party to assist her in doing so. The discussion above suggests that, even in cases of rape and/or cases where the pregnancy threatens the mother's health or life, abortion inflicting harm other than the harm caused by removal of nourishment and protective environment, is morally impermissible. Hence, a third party performing such abortion is behaving morally impermissibly as well.

I will now concern myself with the two remaining cases of involuntary (though not forced) pregnancies: (2b) cases where the pregnancy is the result of failing contraceptives, and (2c) cases where the pregnancy is involuntary but where no attempts have been made to prevent pregnancy. The moral status of abortion in such cases can be determined by referring to the discussion above. If (as seems to be the case) it is morally impermissible
to use another rights-bearer in order to improve a situation caused by oneself or an aggressor, it is certainly morally impermissible to remove the pre-natal organism in cases such as (2b) and (2c).

Consider cases where, even though intercourse and pregnancy are voluntary, the mother wishes to remove the pre-natal organism due to sexual or other physical abuse on the part of the father of the pre-natal organism. Even in cases where the mother could not reasonably foresee such a scenario, removing the pre-natal organism from her body would be equivalent to using it as a means to improve a situation caused by the aggressing father, and hence is morally impermissible.

I will now discuss the implications of Liberty for the case involving the conflicting rights of twins discussed in the preceding chapter. It is necessary to remove, thereby killing, one of the organisms, thereby violating its negative rights, in order to save the other. If nothing is done, both twins will die. It does not matter who is sacrificed and who is saved, for each of the two organisms will survive if the other is removed. Both have negative rights in full. At first sight, the only morally acceptable solution seems to be to let both twins die. Then, it might be argued, no negative rights are violated.

The issue is more complex than it appears at first sight, however. Consider that it is morally impermissible to cause a potential autonomous agent to exist in lethal circumstances. Having intervened through conception, the parents are morally required to take action to save the potential agent in case of threat. In the case involving the twins, both twins are potential agents with equally extensive negative rights to be protected from threats. Both twins consist of innocent threats to one another.

Thus, we seem to be left with the following difficulty: by killing one twin, we impermissibly use him or her as a means to improve the situation of the other twin. If we allow both twins to die, the negative rights of both twins are violated: by conceiving and not preventing harmful consequences of the conception, the negative rights of two potential moral subjects are violated.

If the parents are not morally responsible for the occurrence of the conflict, they are not acting wrongly in sacrificing one twin, but they are acting wrongly in allowing both to die. The rationale for this claim is that they are not morally responsible for being in a situation where they must make such a choice, but once facing the choice, they are morally required to limit the extent of the damage.

The same conclusions apply to the following version of the case involving the twins. The uterus of the mother is cancerous. The surgery necessary in order to remove the tumour can be postponed without hazarding the life of the mother. However, if left untreated, it will kill both twins. If the tumour is removed: one twin will be killed as a side effect of the surgery, while the other is saved.
Is it morally permissible to kill another innocent rights-bearer if doing so is necessary in order to fulfil one's offspring's negative rights? One answer that suggests itself is that such killing is morally permissible, if the parents are not morally responsible for finding themselves in a situation where they cannot avoid harming at least one rights-bearer.

Nonetheless, there is an important moral distinction between the case with the twins, and the case involving the innocent stranger. In the former case, either two rights-bearers are killed, or one rights-bearer is killed. The parents are morally required to limit the extent of the unavoidable damage, by sacrificing one twin. Regarding the case involving the innocent stranger, the damage is equally extensive regardless of what course of action is chosen. Is either course of action morally permissible? The innocent stranger has no obligation to aid the child, and is thereby morally permitted to defend him or herself. However, the claim that he or she is morally permitted to defend him or herself does not imply that the parent who attempts to fulfil his or her offspring’s negative rights is prohibited from attacking the innocent stranger.

Consequently, support for the claim that sacrificing one twin is morally required, while sacrificing an innocent stranger is morally impermissible, must be found elsewhere. Such support can be found in the fact that, in causing the existence of a rights-bearer, one is, or ought to be, aware of the possibility of such conflict, and reduce the damage of it if possible. The innocent stranger, on the other hand, ought not to be forced to pay the price for another’s making such conflict possible.

4. CONCLUSION

In this chapter, I have argued that parents’ obligation to abstain from abortion and infanticide, and their obligation to ensure that the pre-natal organism, infant, or child is provided means sufficient in order for it to develop autonomous agency can be defended in terms of negative rights only. I also argued that application of a certain version of the principle that “ought” implies “can” shows that only self-imposed conflicts between negative rights produce genuine conflicts between rights. The existence of such conflicts do not make Liberty less plausible, since the theory remains consistent in the way suggested by Ruth B Marcus: there is a possible world in which it is possible to avoid genuine rights-conflicts. Application of this principle allows us to solve apparent rights-conflict as effectively as the principles discussed in the preceding chapter, and to avoid its counterintuitive implications. In the concluding, seventh chapter, I will discuss Susan Moller Okin's claim that an advocate of Nozick’s libertarianism must accept that parents own their offspring in virtue of being
their creators. I will argue that even though Nozick’s libertarianism is vulnerable to her criticism, Liberty is not.
CHAPTER SEVEN

AN ALLEGED CONTRADICTION IN NOZICK’S ENTITLEMENT THEORY

1. INTRODUCTION

In Chapter Six, I defended the claim that parents’ moral obligation to provide their offspring means sufficient in order for the offspring to develop autonomous agency can be defended in terms of negative rights.

The purpose of this seventh, concluding chapter, is to address an objection to Nozick’s entitlement theory put forth by Susan Moller Okin in her 1989 book, Justice, Gender and the Family. In short, she argues that Nozick's entitlement theory implies that mothers own their offspring in virtue of being their creators. This implication, she claims, renders the entitlement theory contradictory, since an inherent assumption of the entitlement theory is that all persons own themselves and the resources they produce. However, if all persons are owned by their mothers, no one owns themselves or the resources they produce.

The chapter is structured as follows. In section two, I present Okin's argument in support of the claim that the entitlement theory has implications that render it contradictory. I argue that her argument, interpreted in either of two possible ways, does not establish that the entitlement theory is contradictory, though she establishes that Nozick’s entitlement theory has morally repugnant implications. I then suggest that her argument, interpreted in one of the two possible ways, can be made even more convincing through a slight revision.

In section three, I discuss two possible responses to the revised interpretation of Okin's argument, and establish that even though the revised interpretation of her argument establishes that Nozick’s entitlement theory has morally repugnant implications, there is a plausible version of the entitlement theory that avoids these implications.

The main features of my contribution to the discussion on Okin’s argument are my arguments that acceptance of the moral importance of
potentiality allows avoidance of Okin’s charge of moral repugnance. My solution brings some unexpected implications regarding parents’ rights to prevent others from kidnapping the child and taking over the parents’ role as the child’s caretaker, as well as regarding parents’ entitlement to stem cells produced from embryos.

2. OKIN’S ARGUMENT

2:1 AN ALLEGED CONTRADICTION AND A MORALLY REPUGNANT IMPLICATION OF NOZICK’S ENTITLEMENT THEORY

Okin argues that Nozick’s entitlement theory has implications that render it contradictory and morally repugnant. First, let us see why she considers it contradictory. She claims that the crucial principle of the entitlement theory, the principle of justice in original acquisition, rests on the assumption that at the least all moral subjects own themselves. Since they own themselves, they also own their talent and labour. Since they own their talent and labour, they also own what they produce by means of their talent and labour. However, since all humans are, in a sense, the result of their mother’s labour, the entitlement theory implies, according to Okin, that they are their mother’s property. Hence, persons own neither themselves, nor what they produce.

The assumption that each person owns himself, however, can work only so long as one neglects two facts. First, persons are not only producers but also the products of human labor and human capacities. Anyone who subscribes to Nozick’s principle of acquisition must explain how and why it is that persons come to own themselves, rather than being owned, as other things are, by whoever made them. Second, the natural ability to produce people is extremely unequally distributed among human beings. Only women have the natural ability to make people, and all human beings are necessarily, at birth (at least at the present stage of technological development) the products of specifically female capacities and female labor. When this one simple fact of human life is taken seriously, I will argue, it renders Nozick’s entire theory contradictory to the point of absurdity at its pivotal point - the principle of just acquisition (Okin 1989, pp. 79-80).

Okin’s formulations suggest that she charges Nozick’s entitlement theory with logical contradiction. She claims that it “is likely to run into self-contradiction” (Okin 1989, p. 75), and “leads to absurd and inconsistent
conclusions” (Okin 1989, p. 76). She repeatedly refers to it as inconsistent or self-contradictory (Okin 1989, pp. 80, 81, 84, 86, 87).

Okin could be interpreted as saying that the entitlement theory implies that mothers own their offspring only until the offspring have developed into actual moral subjects. This interpretation carries some textual support. She writes that it seems, “to follow from Nozick’s principle of just acquisition that [persons] are owned (originally at least) by those who make them” (Okin 1989, p 81, my italics). She also writes that the entitlement theory implies that “people are owned at birth by those who made them” (Okin 1989, p. 81, my italics).

Hence, according to one interpretation of Okin’s argument, she says that the entitlement theory implies that humans who are not yet moral subjects do not own themselves, their talent, labour, or the resources resulting from their labour. However, they do own themselves once they have developed properties sufficient in order to be a rights-bearer.

Does Okin’s argument, interpreted in this way, show that Nozick’s entitlement theory has implications that render it contradictory? Okin seems to say that the following claim is an inherent assumption in Nozick’s entitlement theory: (1) all humans own themselves from conception onward, or at least from birth onward. She also seems to say that Nozick’s entitlement theory implies the following claim: (2) all humans are owned by their mothers from conception onward, or at least from birth onward. These claims contradict each other, since the offspring cannot both be owned by another and be owned by him or her self. To own something, fully or in a certain respect, is, according to Nozick, equivalent to having the right to have it at one’s exclusive disposal, fully or in that certain respect, and others have duties not to interfere with one’s doing so. If another owns me, and has the right to have me at his or her exclusive disposal, fully or in certain respects, I cannot have the right to have myself at my own exclusive disposal, fully or in certain respects. Hence, because of the stipulated meaning of the word “own,” it is a logical impossibility that I both own myself and that I am owned by another at the same time.

It might, however, be logically possible for two individuals to own (in the sense stipulated above) the same resource. They may both have the right to treat it as they wish, and both may have a duty not to interfere with the other owner’s treatment of it. Suppose, for example, that two agents have agreed, regarding a certain coat, that each of these two agents may do whatever they want with the coat. Each may put it on, destroy, or sell it, etc., provided they manage to do so before the other agent. Once one of the agents has, for example, put the coat on or sold it, the other agent may not intervene.

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1 I owe Katharina Berndt this insight.
Consequently, it seems logically possible for a foetus or infant to own his or her self, and at the same time be owned by his or her mother. Nevertheless, such a situation cannot occur, since such common ownership presupposes that the parties are capable of consenting to such arrangement.

Nozick’s entitlement theory does not even seem committed to the claim that humans own themselves before they have developed into actual moral subjects. Rather, it seems to say that only humans possessing certain properties such a capacity to, “[shape one’s] life in accordance with some overall plan”, have rights to self-ownership (Nozick 1974, p. 50).

True, Nozick does not claim that he accepts a principle of initial acquisition such that the ownership of children is possible. Neither does he claim that children are excluded from the group of individuals who are rights-bearers. There are also quotations that support the interpretation that he includes children in this group; he writes that parents are not morally permitted to harm their children, since “once a person exists” he or she has claims that others abstain from treating him or her in certain ways: “An existing person has claims…” (Nozick 1974, p. 38). Nonetheless, he has not provided any justification for including them. Young children clearly do not possess the properties that he believes distinguish rights-bearers from individuals who are not rights-bearers. Claiming that children are rights-bearers, without showing how this claim follows from his discussion on what properties distinguish rights-bearers seems ad hoc.

It seems reasonable to understand the entitlement theory as also saying that only individuals possessing such a capacity are capable of producing resources in the morally relevant sense. Hence, even if all humans are owned by their parents from conception or birth onward, those who are allowed to develop self-ownership become owners of themselves, their talent, labour, and fruits of their labour. The suggested interpretation of Okin’s argument has not established any inconsistency in any part of the entitlement theory, even though she may be right in saying that the implication that mothers own their offspring until they have developed into actual moral subjects is morally repugnant.

In the following section, I will establish that Okin’s argument, even if interpreted in a different way, does not establish that Nozick’s entitlement theory has implications that render it contradictory. However, this interpretation of her argument shows that Nozick’s entitlement theory has morally repugnant implications.

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2 I am grateful to an anonymous reviewer of the Journal of Libertarian Studies for pointing this out to me.
2:2 A MORE CONVINCING VERSION OF OKIN’S ARGUMENT

A second interpretation of Okin’s argument is the following. Mothers own their offspring from conception onward or from birth onward in virtue of being their creators, not only until the offspring has developed certain properties, but through the offspring’s entire life, or until their mothers give them their freedom. If Nozick’s entitlement theory implies that mothers own their offspring, and additionally claims that all persons become owners to resources they produce in virtue of being owners of themselves and their labour, it follows that no person can ever own any resource. In fact, mothers cannot even own their offspring, since all mothers are also owned by their mothers, and so on (Okin 1989, p. 86). These implications do not render Nozick’s entitlement theory contradictory: The claim that all humans are owned by their mothers is consistent with the claim that humans that are not owned by others and are carriers of certain morally relevant properties own themselves and what they produce. Nozick would contradict himself if he claimed (as he does) that all persons own themselves, and additionally claimed that all persons are owned by their mothers. However, the entitlement theory does not claim that individuals actually exist who own themselves. The implication that no humans actually own themselves is morally repugnant. This interpretation of Okin’s argument carries textual support:

It is difficult even to imagine all the absurdities of a society premised on such a principle—a society in which persons, including mothers themselves, could not gain self-ownership unless and until their mothers either gave or sold them their freedom! (Okin 1989, p. 86, my italics)

Okin does not explain why she believes that Nozick’s entitlement theory implies that mothers own their offspring through their offspring’s entire life or until the mothers give or sell their offspring their freedom. A convincing argument for her claim seems to be the following: Nozick’s entitlement theory implies that the mother owns the properties that her offspring develops, since the offspring’s developing such properties is analogous to an employee developing a product from material owned by the employer. Even after the offspring has developed properties that characterize a rights-bearer, the mother owns her offspring; including the offspring’s properties, even when the offspring has acquired the properties through his or her own labour.
Steiner has suggested that even though parents own those parts of their offspring that are the products of their labour, their offspring’s “germ-line genetic information transmitted from his grandparents” (Steiner 1994, p. 284) is *not* the parents’ property, since it is a resource “supplied by nature” (Steiner 1994, p. 248). At the age of the offspring’s “majority,” he or she is a self-owner. Presumably, this is so because an individual, once sufficiently mature, *both* has properties rendering him or her a rights-bearer. According to Steiner, the former is not sufficient for full self-ownership. But “Prior to the onset of majority – during his zygotic, foetal and minority phases – he is at [his parents’] disposal” (Steiner 1994, p. 248). Does this mean that parents may treat their offspring any way they wish, or are they restricted in their treatment of him or her even before their offspring reaches majority? Steiner does not address this issue. However, *if* the parents can *partially* own their offspring before the offspring reach majority, why do they not continue to do so once the offspring has developed majority? Steiner does not explain why the properties rendering the offspring a rights-bearer makes him or her a self-owner, in spite of the fact that these properties are the products of the parents (and others) labour.

Perhaps Nozick could avoid making contradictory claims by saying that individual’s come to own themselves once their owners have died. However, there are no explicit quotations to be found in *Anarchy, State, and Utopia* either for or against this interpretation of Nozick’s entitlement theory.

### 2:3 A SLIGHT REVISION OF OKIN’S ARGUMENT

Furthermore, Okin’s argument can be made even more convincing since it is possible to establish that not only the mother, but both parents, are producers of their offspring.

Conception is, according to Okin, not labour which contributes to the production of a person. Once conception is complete, she argues, the mother’s labour consisting of her carrying the organism to full term contributes to the production of a person, since she is the sole producer of the infant who later develops into a person. Okin’s reason for claiming that the mother is the sole producer of the infant is the following.

Once she is freely given a sperm (as usually happens) or buys one (as is becoming no longer very unusual) – in either case amounting to legitimacy in transfer – a fertile woman can make a baby with no other resources than her body and its nourishment (Okin 1989, p. 83).
This strikes me as unconvincing, since it is highly dubious whether conception resulting in pregnancy is most plausibly described as the woman being “given a sperm” by her sexual partner. Rather, it seems uncontroversial to describe such sexual intercourse as two individuals mutually bringing an ovum and a sperm together. If the latter description is correct, and if we accept, for the sake of argument, that the offspring is “produced” in some sense, it seems that both parents are producers of their offspring (Hubin 2001, p. 8, Wang 2000, p 1). Okin briefly mentions the possibility that both parents are producers, but does not attempt to respond to it (Okin 1989, p. 80). She suggests; however, that “Marriage … involves a prior commitment that children are to be regarded as equally the mother’s and the father’s” (Okin 1989, p. 83).

In addition, even though pregnancy is a female condition, it hardly qualifies as labour, since it requires no action on the part of the mother. It might be suggested that nourishment, which is necessary in order for the prenatal organism to survive, is the result of labour on the part of the mother.

It is, of course, possible to nourish the mother, and thereby the prenatal organism, by means other than maternal activity, for example, through a drip. However, if nourishment is a result of action on the part of the mother, does she then, by nourishing, contribute to the production of a person? She may, but since nourishing is only part of the production, the production as a whole is not an exclusively female activity. Additionally, the nourishing of the mother may be a result of the father’s labour, and in that case, he may qualify as a producer of the infant after conception as well (Hubin 2001, p. 9).

Okin argues that even if we accept that pregnancy requires none or very small effort on the part of the mother, she may still be entitled to her offspring, since the development of it takes place within her body, which is her property (Okin 1989, p. 83). Nonetheless, even if this is granted, pregnancy is only part of the production of the offspring. Delivering an infant is clearly an action; but it is only a part of the production.

Is the mother the sole producer of the infant if she has purchased sperm, paid for the fertilization, and nourished her offspring during pregnancy and infancy without support from others? I believe it reasonable to give an affirmative answer to this question. Furthermore, since the donor is not involved in the fertilization, he carries no moral responsibility for neglect or harmful interventions by others against his offspring.

Conversely, if a man buys an ovum, pays for the fertilization, and contracts a surrogate mother to carry it full term, he seems entitled to the individual she gives birth to.

There may be a line of defence available to Okin against the claim that other’s labouring on the offspring before and after birth makes them part owners of it. She does not, however, take advantage of this possible line of
defence. She could respond that even in cases where others chose to contribute to the development of her offspring, they are no more entitled to the offspring than friends deliberately coming over to help you paint your house are entitled to your house. This is a strong argument, but it does not disqualify the biological father's being part owner of his offspring.

If the parents have agreed that some other agent’s contribution to the development of their offspring renders the latter part owner of it, he or she is, of course, entitled to it. In such a case, however, it is not the labour as such, but rather the content of the contract, whatever it may be, which entitles him or her to the offspring. A surrogate mother, for example, is not automatically entitled to the organism she carries, should she want to keep it, and Okin acknowledges this (Okin 1989, p. 83n).

Consequently, it is possible to formulate a more convincing version of Okin's argument, claiming that both parents are (in most cases) the producers of, and thereby entitled to, their offspring.

3. TWO POSSIBLE RESPONSES TO THE MORE CONVINCING VERSION OF OKIN'S ARGUMENT

There are two counterarguments available against the more convincing version of Okin's argument. The first of these aims at establishing that parents are not entitled to their offspring; since procreation and supporting one’s offspring do not qualify as the kinds of labour which entitle someone to a resource according to Liberty.

The second counterargument tries to show that even though procreation and supporting one’s offspring do qualify as entitling labour, the offspring, from conception onward, has properties that characterize a rights-bearer; hence, others cannot own him or her without his or her consent.

3:1 PARENTS DO NOT PRODUCE THEIR OFFSPRING

In order to examine whether procreation and support qualify as labour, which entitles the parents to their offspring, I will discuss some kinds of behaviour that, according to Liberty, obviously entitle a moral subject to a certain resource. I will also outline an explanation to such behaviour entitling the moral subject to a resource that has some similarities to one that has appeared in the literature. Finally, I will discuss whether procreation is
similar in any relevant sense to labour, which entitles the labourer to a certain resource.

Paradigmatic examples of original acquisitions, which according to Liberty, entitle a moral subject to a certain resource, are: (1) producing something out of raw material, for example, growing crops, performing various kinds of handcraft on not previously worked material, or raising cattle, (2) producing something out of some previously worked, though unowned, material, for example, constructing a house out of unowned boards, (3) in other ways gaining control over some resource, for example, building a fence around some field or putting one's mark on a tree, or simply picking up a previously unowned object, such as an acorn. The moral legitimacy of such original acquisitions is, of course, dependent on whether the original acquisition is in accordance with the Lockean proviso. Since the content of the proviso is irrelevant to the argument advanced in this section, it will not be further discussed.

I believe that A. John Simmons, through his interpretation of the Lockean principles of just acquisition, has provided a largely plausible explanation to what property all these kinds of morally permitted original acquisitions have in common: they are all, in Locke's words, examples of "mixing one's labour" with some previously unowned resource. This vague formulation is made more precise in Simmon's careful discussion.

The basic Lockean idea is that moral subjects are owners of themselves, including their talents and labour. To own something is to have a right to dispose over it as one pleases. In mixing what one already owns (for example, one's labour) with something previously unowned, one has acquired the previously unowned resource in a morally permissible way. The Lockean principle of just acquisition, interpreted in this way, has been severely criticized by Nozick among others. The most common points of critique are the following. (1) The claim that one can literally mix one's labour with something rests on a categorical mistake; it does not make sense, since labour cannot be mixed with objects (Nozick 1974, p. 174-175; Simmons 1992, p. 267, 1998, p 209; Waldron 1983, p. 40-41). (2) If it makes sense to claim that one can mix one's labour with something, it also seems to make sense to claim that while doing so, one loses one's labour rather than acquiring the resource with which one has mixed one's labour (Becker 1976, pp. 658-659, 1977, pp. 40-41; Fressola 1981, p. 315; Miller 1980, p. 6; Nozick 1974, pp. 174-175; Sartorius 1984, p. 204; Simmons 1992, p. 267; Waldron 1983, p. 42).

Simmons, in his 1998 article, "Maker's Rights", claims, "... any moderately sympathetic reading of Locke's labor-mixing argument should show us how Locke can easily address these difficulties" (Simmons 1998, p. 210). Regarding the first point of criticism stated above, Simmons suggests that the claim that one can mix one's labour with a resource, thereby becoming entitled to it, need not necessarily be understood literally, and
therefore does make sense. In setting a purpose for oneself regarding how to "make productive use of the object", one performs "mental labor". The plan "is 'mixed' with the object through the purposive activity that constitutes [one's] physical labor".

There is, then, a perfectly natural (and not at all unintelligible) sense that can be given to Locke's claim that in laboring on nature I “mix” my property in myself with nature: I bring (part of) nature within my legitimate sphere of self-government by physically imposing my plan for its useful employment upon it. My plan, which is the product of my mental labor, is "mixed" with the object through the purposive activity that constitutes my physical labor. There is nothing incoherent about such an account. Indeed, it seems to me broadly correct (Simmons 1998, p. 210).

Even though Simmons seems to provide a plausible interpretation of Locke's idea, his characterization of behaviour entitling someone to a resource is merely a convincing explanation of what properties some original acquisitions have in common, and thus too restricted for my purposes. In order to cover all behaviour that entitles someone to a resource according to Liberty, the characterization cannot require that the plan in question be a plan for “useful employment” in any strict sense. For my purposes, it suffices to characterize behaviour entitling someone to a resource as simply imposing one’s plan on it. Hence, while accepting Simmon’s idea that “mixing one’s labour” with some resource is most plausibly understood as “imposing one’s plan” on some resource, I reject the requirement that the plan must be a plan of “useful employment” of some resource.

Does conception fall under the description "imposing one’s plan on some resource"? It certainly seems to; all that is required in order for conception to fall under such description is the parents’ deliberately involving in it. Each parent thereby “imposes” his or her “plan” on the other parent’s resource (a sperm or an ovum), by bringing it together with his or her own resource.

What if conception is not deliberate, being the result of rape, failing contraceptives, or carelessness? In case of rape, the victim may be entitled to all resources “thrown” at her by the rapist, as one becomes the owner of seed thrown at one’s property. Pregnancy due to failing contraceptives or carelessness is not the result of imposing one’s plan on some resource, and does not qualify as production in the morally relevant sense. Such behaviour is morally on a par with pouring a can of tomato juice into the sea.

It might be objected that while conceiving, one does not labour on some resource in accordance with one’s plans; rather, one initiates a process, which results in the offspring. John Locke, in his 1690 *Two Treatises of Government*, argues that parents do not produce their children in a sense that entitles them to their children; since, in order to do so, one must understand
and control all parts of the process leading to the product (Locke 1690, Ch. 1, sect. 53).

Excluding procreation from the category of behaviours entitling one to a resource for those reasons would, however, result in the exclusion of growing, for example, of crops and raising cattle from that category of behaviours as well (Nozick 1974, p. 288). It seems more reasonable to accept that such initiations of processes are examples of mixing one’s labour with a resource in the sense described above, than to exclude such behaviour.

In summary, procreation seems similar in all morally relevant senses to behaviours that, according to Liberty, entitle the agent to the resource. As will be clear in the following section, however, there are strong arguments in favour of the claim that the labour of procreation, pregnancy, and upbringing does not entitle parents to their offspring.

3:2 PARENTS PRODUCE THEIR OFFSPRING, BUT ARE NOT ENTITLED TO HIM OR HER

Even if we accept that parents produce their offspring in the sense described above, there are strong arguments in favour of the claim that parents are not entitled to their offspring. Nozick mentions, but does not defend, the suggestion that “… children, because of something about their nature, cannot be owned by their parents even if these make them” (Nozick 1974, pp. 288-289). Simmons has formulated a similar view:

Some kinds of labor-mixing cannot create property in the object of labor, because that which is labored on is itself a being born to natural freedom/self-government and so is already owned (i.e., by itself [and/or by God]). Examples are cases in which I labor to save the life of an accident victim, the slaver labors to capture his victims, or parents labor to conceive, deliver, and raise their children (Simmons 1998, p. 211).

Even though, admittedly, pre-natal organisms and infants are not actual moral subjects, they are potential moral subjects. As argued in Chapter Four, potentiality for autonomous agency is a sufficient criterion for being a rights-bearer. Provided Simmons’ claim is correct, and provided that potential autonomous agents are "born to natural freedom/self-government", potential autonomous agents cannot be owned by their parents or anyone else except themselves, due to their being carriers of certain properties.

Would it be contradictory to claim that potential autonomous agents and actual autonomous agents own themselves in virtue of being carriers of
certain morally relevant properties, and also claim that at least actual autonomous agents may sell themselves into slavery, thereby transmitting part or all of their rights of self-ownership to another? The claims do not contradict one another. As noted above, "owning oneself" is most plausibly interpreted as "having the right that others do not dispose oneself in certain ways without one's consent". The seller voluntarily permits another to dispose over him or her. He or she remains a rights-bearer through the whole process. Since all interventions with the agent are consensual, neither are his or her rights violated, nor has he or she lost his or her rights to self-ownership, even though he or she has accepted exposal to treatment that would qualify as a rights-violation if not consented to (Hubin 2001, p. 7).

3:3 SOME CONTROVERSIAL IMPLICATIONS

The argument defended in this chapter has controversial implications regarding parents’ presumed rights “not to have the job of parenting stolen or usurped by others” (Simmons 1992, p. 178). Since parents do not own their children, other agents seem morally permitted to confiscate other’s offspring, provided they offer the child at least the same opportunities to develop autonomous agency as would the biological parents. If the kidnappers provide such opportunities to a greater extent than the biological parents, the latter may even violate their offspring’s rights if intervening with the former. These conclusions are, in principle, correct. However, since most, or all, kidnappings, even of infants, would cause the child, once reaching a certain age, severe mental distress, such behaviour is morally impermissible in most, if not all, cases.

The argument defended in this chapter also has controversial implications regarding the practice of embryonic stem cell research. During such research, embryonic stem cells are extracted from the embryo at a very early stage of its development, in a way that necessarily destroys it. It might be suggested that the embryo, though violated if killed, is owned by the killer, since the killer has “mixed” his or her labour with it in the sense stipulated above. Are there any reasons to believe that “mixings” of labour, which also fall under the description “rights-violation”, do not entitle an individual to a certain resource?

Suppose an adult was killed and his or her body was used for some scientific research. An advocate of Liberty would not only oppose such treatment of a person, but also oppose the claim that the killer is entitled to the body in virtue of having committed the murder. Accepting the normative assumptions of this essay, can we consistently hold on to this belief and claim that the killer of the embryo owns it in virtue of having killed it?
One morally relevant difference between at least some adults and all embryos is that an adult may have signed various contracts regarding how he or she wants to be treated after his or her death. According to my normative outlook, violating such a contract is violating the rights of the living person, even though the violation takes place post mortem. This argument is obviously not applicable to the embryo.

Nonetheless, let us assume that no such contracts have been signed. Given the normative assumptions of this essay, there seems to be no morally relevant difference between an adult being destroyed for scientific purposes, and an embryo being destroyed for such purposes. There are, however, strong arguments in favour of the claim that the mere act of committing a rights-violation does not entitle the violator to his or her victim.

Such killing could be considered as destruction of the morally relevant properties of the individual. Destroying another moral subject’s belongings (his or her morally relevant properties) does not seem to entitle the thief to the result of his or her intervention (a dead organism). Rather, it seems that the dead organism has the status of an unowned resource, which can be claimed by anyone, including the violator. The organism does not belong to the violator in virtue of him or her mixing his or her labour with it before its death.

The first agent, who mixes his or her labour with the dead organism and thereby is entitled to it, is also entitled to whatever results from further labour on it, unless he or she has agreed otherwise with other agents. Even if such agreements have taken place before the violation, they are still valid after the violation, unless an agent who is not part of the agreement mixes his or her labour with the dead organism before the parties involved in the agreement does so. Hence, an embryo killed for scientific purposes is an unowned resource until some agent mixes his or her labour with it. If the labourer has agreed with others to share his or her ownership in the dead organism, all behaviours of the involved parties that are in accordance with the contract are morally permissible. Parties of such agreement can be private persons or institutions.

4. CONCLUSION
In this chapter, I have argued that Okin’s argument does not show that Nozick’s entitlement theory is inconsistent, though she shows that it has morally repugnant implications. These implications can be avoided by a revised entitlement theory, which endorses the claim that potentiality for being a moral subject gives an individual rights to self-ownership.
EPILOGUE

I will close this essay by summing up the results of the discussion, and highlighting the benefits and drawbacks of the views discussed in Chapters Five and Six.

In Chapter One, I stated that the aim of the essay is to formulate a libertarian theory, which can accommodate arguments for the moral rights of human pre-natal organisms, infants, and children to certain physical integrity and aid. I provided an overview of the discussion on this topic within the libertarian tradition. I then suggested that it is possible to provide an alternative, systematic explanation and justification of the intuition that potential autonomous agents have these rights. I claimed that one could achieve such an explanation and justification by applying the core principle of all versions of libertarianism, a principle that prohibits certain active inflictions of harm on rights-bearers.

In Chapter Two, I formulated the normative outlook of the essay, Liberty. I explained its similarities and differences with Nozick’s libertarianism, and argued that duties ought to be considered as fundamental, and that rights are derived from duties. I also claimed that capacity for autonomy is one property that distinguishes the group of individuals toward which others have duties.

In Chapter Three, I elaborated on the theory sketched in Chapter Two. By endorsing a revised version of Donagan’s active/passive distinction, I formulated a clear distinction between active and passive behaviour, which is necessary in order to understand the distinction between positive and negative rights. I distinguished between intended and foreseen consequences of active interventions, and discussed the moral relevance of the distinction.

In Chapter Four, I argued that those pre-natal human organisms, human infants, and children, who have potentiality for autonomous agency in a certain sense, have negative rights against all autonomous agents not to be harmed or killed. Being an unconventional position to take for a libertarian, it requires thorough defence against objections. I argued that is possible to formulate a characterization of potentiality in the morally relevant sense that is neither arbitrary nor vague. I then tried to show that
possession of such a potentiality is the best ground for recognizing temporarily unconscious human adults as rights-bearers. If temporarily unconscious adults are rights-bearers in virtue of their potentiality, so are pre-natal human organisms, human infants, and non-autonomous children.

In Chapter Five, I discussed the conjecture that potential autonomous agents, in addition, have positive rights against all autonomous agents to means sufficient to develop into actual autonomous agents, and remain autonomous for a period long enough to be able to secure their future autonomy. Once he or she has remained autonomous long enough, the autonomous agent has merely negative rights. Combined with the principle that negative rights are lexically superior to positive rights, this view is plausible and consistent. It implies, however, that one may never kill one rights-bearer in order to save another, even if both will die anyway if neither is killed. This implication is counterintuitive to most.

In Chapter Six, I argued that potential autonomous agents’ rights to aid could be defended in terms of merely negative rights. The main benefits of this suggestion are simplicity and coherence. Liberty says that autonomous agents, who initiate a chain of events that will harm an innocent rights-bearer unless the harm is prevented, are morally required to prevent the harm from occurring. Aspects of all behaviour can be described as either active or passive in relation to some event or states of affairs. The behaviour of an agent, who initiates a chain of events that will inflict harm on a rights-bearer unless prevented, and then intervenes again and prevents the harm, can be described as passive in relation to the state of affairs that the rights-bearer remains unharmed. The autonomous agent is morally obligated to intervene in order to abstain from inflicting harm. The obligation to intervene can therefore be described as a negative obligation.

I argued that procreation followed by neglect could be described as active infliction of harm on the neglected individual. Hence, autonomous agents who cause the existence of a potential autonomous agent are morally required to provide the potential autonomous agent certain means sufficient to develop autonomous agency, and remain autonomous long enough to secure future autonomy.

By adopting this view, we are also able to solve apparent conflicts of rights as effectively as if we adopted the view developed in Chapter Five. However, we are also able to avoid the implication that it is impermissible to kill one potential autonomous agent in order to save another potential autonomous agent (where both are one’s offspring), even in cases where both will die if neither is actively killed. Conceiving them and not taking action to save any of them is actively causing both to exist in lethal circumstances. Killing one to save the other restricts the number of violated rights.

Adopting this view does not force us to accept that killing an innocent bystander in order to save one’s offspring is morally permissible or
even required. The innocent bystander ought not to be forced to pay the price for the parents’ making such an apparent conflict possible.

In Chapter Seven, I argued that Liberty, by endorsing potential autonomous agents’ negative rights to self-ownership, avoids certain charges of moral repugnance with which Nozick’s libertarianism struggles.
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