Beyond Normative Control: Against the Will Theory of Rights

Joseph Bowen

Department of Philosophy, University of St Andrews, St Andrews, UK, and Department of Philosophy, University of Stirling, Stirling, UK
Email: jb324@st-andrews.ac.uk

Abstract
The Will Theory of Rights says that having control over another’s duties grounds rights. The Will Theory has commonly been objected to on the grounds that it undergenerates right-ascriptions along three fronts. This paper systematically examines a range of positions open to the Will Theory in response to these counterexamples, while being faithful to the Will Theory’s focus on normative control. It argues that of the seemingly plausible ways the defender of the Will Theory can proceed, one cannot both be faithful to the theory’s focus on normative control as the grounds of rights and achieve extensional adequacy.

Keywords: Rights; directed duties; Will Theory; autonomy; control

1. Introduction
Suppose that Ann justifiably owns some property. She plays in its garden with her child. Carl, her neighbor, is under a duty not to drive across her garden. Beth does not have a garden, so plays in the park with her child. Carl is under a duty not to drive across the park. Carl drives across Ann’s garden and the park, making both unfit for their purpose. In both cases, Carl does not act as his duty dictates. Let us suppose, he harms Ann and Beth. Commonly, it is thought that Carl wrongs Ann but not Beth, and manifests disrespect for Ann but not for Beth. Perhaps this is because Ann holds a (claim-)right that Carl not drive across her lawn, whereas Beth does not hold a (claim-)right that Carl not drive across the park. Correlatively, Carl is under a directed duty, owed to Ann, not to drive across her garden, whereas he does not owe Beth a directed duty not to drive across the park.

A theory of rights (and, correlatively, of directed duties) must explain the following three connected features. First, it must offer an account of what it is to owe a duty to another individual. Second, it must offer an account of why, through infringing a directed duty, the duty-bearer does not merely act wrongly, but wrongs the person to whom she owes that duty. Third, it must offer an account of why, through infringing a directed duty, the duty-bearer manifests disrespect towards the person to whom she owes that duty (Cruft 2013).¹

Ann has control over Carl’s duty not to drive across her lawn, whereas Beth has no control over his duty not to drive across the park. The Will Theory of Rights says that having control over another agent’s duties grounds rights. Perhaps this explains why Carl owes his duty to Ann. If Carl

¹The domain in which we find the right and correlative duty affects the nature of the wrong and disrespect. If the right is moral, we have a moral wrong and moral disrespect. If legal, we have a legal wrong and legal disrespect. For the most part, I speak about rights without specifying their nature. When this is salient (e.g., section 4), I distinguish between moral and legal rights. See also Wenar on being “game-wronged” and Cruft on students owing duties to their lecturers (Wenar 2013, 203–4; Cruft 2013, 207); cf. section 5.1, where I consider whether wronging and directed duties come apart from rights.

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infringes his duty, he fails to respect that Ann has normative control over him. This may explain why he wrongs and manifests disrespect towards her.

The Will Theory has commonly been objected to on the grounds that it undergenerates right-ascriptions along three fronts. This paper systematically examines, in a manner not explored before, a range of positions open to a defender of the Will Theory in response to these counterexamples. I argue that none of these initially plausible ways of responding are wholly satisfactory. The argument generalizes to form a dilemma for the defender of the Will Theory. Either, one can remain faithful to the Will Theory’s account of control as the grounds of rights, in which case the theory undergenerates right-ascriptions, or one can revise the Will Theory to increase its extensional accuracy at the cost of obscuring the theory’s focus on normative control. Moving forward, defenders of the Will Theory need either to take a stand on this dilemma or else find some other way of dissolving the dilemma.

Section 2 offers an exposition of the Will Theory. Section 3 defends the Will Theory against an important recent objection: that the paradigm Will Theory right-holder does not hold the necessary pair(s) of powers over another’s duties. Section 4 considers the standard three dimensions along which the Will Theory undergenerates right-ascriptions. Sections 5 to 7 move beyond much of the literature on the Will Theory, systematically examining how the Will Theory might answer these undergenerations. We want to be both faithful to the Will Theory’s account of the grounds of rights while also properly accounting for the direction of duties.

A preliminary: This paper operates within Wesley Hohfeld’s structural analysis of rights (Hohfeld 1919). Having a good grasp of Hohfeld helps elucidate and assess the Will Theory. Hohfeld suggested that all rights refer to a relation between two parties. Let X refer to the right-holder and Y to the person against whom she holds that right. First, X has a claim that Y Φ, against Y, iff Y is under a duty to Φ, owed to X. If you have a claim-right, against me, that I give you my pen, I am under a duty, owed to you, to give you my pen. This differs from Beth and Carl’s normative relationship above, where Carl does not owe his duty to her.

Second, X has a liberty to Φ, against Y, iff X is under no duty not to Φ, owed to Y. If I have a liberty-right, against you, that I not give you my pen, I am not under a duty, owed to you, to give you my pen. Many think that I can have a liberty-right, against you, that I not give you my pen, but be under a duty to give you my pen nonetheless; it is just that this duty cannot be owed to you. For example, I may have promised a third party that I will give you my pen. Were I not to give you my pen, I would not wrong you because I did not owe my duty to you, but would wrong the third party. Inasmuch, liberties are directed just as claims are directed.

Claims and liberties are first-order incidents. There are also second-order incidents. X holds a power over Y iff X is able to alter the normative relationship between Y and herself (or between Y and some other party). From Y’s perspective, she is liable to X changing their normative relationship. Suppose that I have the power-right to make promises with respect to my pen. If I promise to give you my pen, I have changed our normative relationship from one in which I held a liberty-right, against you, not to give you my pen, to one in which you hold a claim-right, against me, that I give you my pen. Second-order incidents also interact with other second-order incidents. I might bestow upon you the power-right to decide what to do with the pen. Finally, X holds an immunity

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Some think that some directed duties do not correlate with claim rights (Cruft 2013, 209; Wenar 2013, 214).

For example, Van Duffel (2012, 107). Cf. Wenar’s (2015) definition of liberties that does not account for the directionality of liberties (X has a liberty to φ iff X is not under a duty to φ).

I might make it that you have to share my pen with some third party, thereby altering the normative relationship between you and them.
over Y iff X is not liable to Y changing their normative relationship (or the normative relationship between her and some other party). Before I give you my pen, I might hold an immunity-right that you not divest me of my rights to my pen.

A final preliminary: Because this paper concerns the Will Theory, I attempt to avoid any dialectical tit-for-tat with other theories of rights. If one thinks that they cannot assess the Will Theory without comparison to alternatives, this paper sets out the detail necessary to assess the theory and lays clear its weaknesses.

2. The Will Theory

The Will Theory says that rights give agents normative control. As Neil MacCormick puts it, it recognizes the right-holder’s will as “preeminent over that of others in relation to a given subject matter and within a given relationship” (1977, 189). Let us offer an initial definition.

Will Theory: For X to have a (claim-)right that Y Φ, against Y, X must have the power to alter Y’s duty to Φ.6

Given that the idea behind the Will Theory is that rights endow their holder with normative control, we can see why, for X to have a right that Y Φ, she must hold a power to alter Y’s duty to Φ—this grants her normative control. Suppose you are under a duty of noninterference with respect to my pen. If I have the power to waive your duty, I have normative control over my pen; I am permitted to keep hold of it, give it to you, and so on. If it were a third party who had the power to free you from your duty, on the face of things I would not have normative control over the pen. At any point, the third party could free you from your duty. It is for this reason that Hillel Steiner sees rights as demarcating “spheres of practical choice within which the choices made by designated individuals […] must not be subjected to interferences” (2000, 238). Inasmuch, on this picture, rights are “normative allocations of freedom.” In H. L. A. Hart’s terms, “[t]he individual who has the right is a small-scale sovereign to whom the duty is owed” (1982, 183).7

In section 7, we consider a revision to the Will Theory on which it is not necessary that X has the power to alter Y’s duty, but that X has some weaker measure of control over Y’s duty. We begin with this stronger formulation since it most clearly endows X with control over Y’s duty.

The Will Theory offers an account of the grounds of rights. Talk of “the grounds of rights” might be ambiguous.8 First, one might think that what is being identified is the moral base of Y’s correlative duty. That is, the normative control afforded to X by her right explains why Y is under a correlative duty. Suppose that Dana has a right, against Eric, that Eric not interfere with her movement. On this view, the reason why Eric is under a duty of noninterference is that this allows Dana control of her life. Alternatively, second, the Will Theory may recognize a plurality of moral bases of duties but suggest that when a duty protects X’s will, it becomes directed (and, correlatively, confers a right upon X). Suppose that Eric promises Dana that he will water her flowers. Eric’s duty might not owe its existence to the fact that this serves Dana’s autonomy (promise-keeping might be

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6Hart (1955, 1982), Wellman (1985), Sumner (1987), Steiner (1994, 2000). This definition suffices only for claim rights for Y only has a correlative duty to Φ when X has a claim to Φ. I omit "(claim-)") hereafter (except for definitions). As suggested by my exposition of Hohfeld, I think that liberties, powers, and immunities can classify as rights. The Will Theory can be reformulated to accommodate this: see Appendix (on file with author) and Cruft (2004, 367–68); Steiner makes room for immunities (1994, 61). I also omit that Y’s duty to Φ must be owed to X for I see the Will Theory as offering an account of what it is to owe a duty to another.

7In its strongest formulation, the Will Theory would require that the right-holder has exclusive control over the duty, as is typically the case. If the right-holder does not have exclusive control, this complicates matters. We turn to similar issues in section 7.

8My distinction might be analogous to Rainbolt’s distinction between Justificatory and Protective versions of the Will Theory (Rainbolt 2006, 87).
grounded in some other way). Rather, because Dana has control over Eric’s duty, this feature makes Eric’s duty directed.

There are two dialectical reasons often given in support of the Will Theory. First, the Will Theory solves the third-party beneficiary problem that putatively plagues the dominant alternative theory of rights, the Interest Theory. On one version of the Interest Theory (the Nonjustificatory Version), for $X$ to have a (claim-)right that $Y \Phi$, against $Y$, her interest must be served by $Y$’s duty (e.g., Kramer 2000). While this is only a necessary condition for right-ascriptions, some people are skeptical that any further condition could explain why third-party beneficiaries are not counterintuitively owed the duties from which they benefit. Suppose Dana promises Erica that she will pay Fran $10. What might explain why Dana does not owe her duty to Fran given that Fran’s interests are served by the duty (Hart 1982; Steiner 2000; Sreenivasan 2005; cf. Kramer 2010)? The Will Theory avoids this conclusion as Fran does not have the necessary control over Dana’s duty.

Second, the Will Theory can deal with referred rights that are not justified by their holder’s interest, such as a journalist’s right not to disclose her sources. These rights are problematic for the Justificatory Version of the Interest Theory, on which for $X$ to have a (claim-)right that $Y \Phi$, against $Y$, $X$’s interests must be of sufficient weight to place $Y$ under a duty to $\Phi$ (e.g., Raz 1986, 166; cf. May 2012).

A final piece of exposition is required for the Will Theory. Above I said, let us proceed with the assumption that $X$ needs to hold the power to alter $Y$’s duty for this endows her with normative control over her duty. However, there are several ways that $X$ might be able to alter $Y$’s duty. These other powers become relevant below (sections 3 and 7).

Hart thought there were three disambiguations of $X$’s power (1982, 183–84). First, if the duty has not been infringed, $X$ might hold the power to waive or enforce $Y$’s duty. Second, if it becomes clear that $Y$ will infringe her duty, or if $Y$ does infringe her duty, $X$ might hold the power to waive or enforce proceedings for the remedy of $Y$’s failure to respect her duty (for example, in the legal case, $X$ may hold the power to sue for an injunction or compensation). Third, $X$ might hold the power to waive or enforce those remedies.

Steiner (2000, 240) separates each of Hart’s powers into two powers. It is useful to do so for reasons that become clear in the following section:

1. to waive compliance with the duty;
2. to leave the duty in existence;\(^9\)
3. to waive proceedings for the enforcement of the duty;\(^10\)
4. to demand proceedings for the enforcement of the duty (i.e., sue for an injunction or compensation);
5. to waive enforcement of the duty;
6. to demand enforcement of the duty.

Let us begin by assuming that for $X$ to have a right that $Y \Phi$, all six powers must be held by $X$ (compare section 7). With all of this in place, we can move on to assess the Will Theory.

\(^9\)This is not a Hohfeldian power for it is not an ability to alter the normative relationship between two parties but the ability to leave things as they are. This will be made clear in the following section. I delay refining it until then for ease of exposition.

\(^10\)Matthew Kramer has suggested in private communication that to waive proceedings for the enforcement of the duty in advance of a contravention of the duty is to waive the duty. This is incorrect. You may be under a duty not to assault me and I say, “You are under a duty not to assault me, but I waive my power to enact proceedings for the enforcement of the duty.” My doing this does not waive the duty. You are still under a duty not to assault me.
3. A terminological refinement

Matthew Kramer (2013) has recently raised a novel objection against the Will Theory. Within any legal system, there are two default rules that might be operating concerning the postviolation stage of enforceability (3–6 above).11

(1) A default rule under which the nonexercise of a power-of-enforcement in the aftermath of a violation of a duty will result in the noneffectuation of the duty.

(2) A default rule under which the nonexercise of a power-of-waiver in the aftermath of a violation of a duty will result in the effectuation of the duty.

The idea is that, for any duty, there must be some default rule in place determining what will happen if the duty is (likely to be) violated and the powerholder is silent.

Suppose that the second default rule is operative. If \( Y \) is likely to or does violate her duty, \( X \)'s nonexercise of powers 3–6 result in the enforcement of that duty. For example, suppose that \( Y \) does violate her duty and \( X \) wants to sue for compensation. Given the second default rule, \( X \) neither holds nor exercises any power of enforcement because the enforcement of \( Y \)'s duty will proceed automatically. This is not a power of enforcement for “a putative legal power is no legal power […] if it does not make any difference to anyone's legal positions” (Kramer 2013, 252; my emphasis).

The worry for the Will Theory is that, rather than \( X \) holding two powers, 5. to waive enforcement of the duty; and, 6. to demand enforcement of the duty, \( X \) actually holds one power, 5. But, according to the standard definition of the Will Theory, right-holders need to hold the pair(s) of Hohfeldian powers.12 So, the Will Theory cannot account for any rights given the operativeness of either default rule.

However, even though \( X \) does not hold the relevant pair of Hohfeldian powers, the combination of \( X \) having the power of waiver and the operativeness of the second default rule means that \( X \) has control over \( Y \)'s duty. Either \( X \) waives \( Y \)'s duty to pay compensation or she does not waive \( Y \)'s duty to pay compensation (in which case \( Y \) is under that duty).13 Although the Will Theory has traditionally been formulated to require that \( X \) hold the pair(s) of Hohfeldian powers over \( Y \)'s duty, there is no reason why we should not refine the Will Theory to reflect that \( X \) has the necessary control over \( Y \)'s duty to count as a right-holder in this case:

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\begin{align*}
& \text{Will Theory 2: For } X \text{ to have a (claim-)right that } Y \Phi, \text{ against } Y, \text{ either:} \\
& \hspace{1cm} (i) \text{ if default rule 1 is operative, } X \text{ must have the power to enforce } Y \text{'s duty to } \Phi, \text{ or} \\
& \hspace{1cm} (ii) \text{ if default rule 2 is operative, } X \text{ must have the power to waive } Y \text{'s duty to } \Phi.
\end{align*}
\]

Kramer writes, if one were to “retreat from the notion that a right consists in three sets of paired powers over a correlative duty, they would be abandoning their rationale for the Will Theory” (Kramer 2013, 257). This is incorrect. The refinement is motivated by, first, a recognition that some default rule must be operative with reference to the waiver or enforcement of duties and, second, that a putative right-holder must have the relevant kind of normative control over the correlative

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11 Postviolation because there is a default rule built into power (2). See footnote 9.
12 This is not a strawman characterization of the Will Theory: “something is a right if it is […] a claim […] to which are attached powers of waiver and enforcement” (Steiner 1994, 61; emphasis mine).
13 Things get more complicated if \( X \) is not uniquely empowered to waive the enforcement of \( Y \)'s duty. In a longer version of this paper, I take up this question, as well as, first, if \( X \) does not have an immunity with regards to exercising her power and, second, if \( X \) does not hold the liberty to exercise her power.
duty. Given that X has the power to waive Y’s duty, she is free to reshape her normative space. Given that the duty will be enforced if she does not act, she is free to have her normative space shaped as she would like.

4. Undergenerations of rights

With Kramer’s objection dealt with, let us turn to the standard objections to the Will Theory.

The Will Theory requires that a right-holder has control over the duty that correlates to her right. This means that “potential rightholders [are] only those beings that have certain capacities: the capacities to exercise powers to alter the duties of others” (Wenar 2005, 239). This precludes agents with undeveloped, compromised, or damaged rational capacities (for example, very young children, the severely mentally disabled, and some of those suffering from Alzheimer’s disease). These agents cannot meaningfully waive or enforce the duties of the individuals against whom they hold their rights, so they cannot hold powers. Accordingly, they cannot hold rights on the Will Theory (MacCormick 1982, 156–59; Kramer 2000, 69–70). This is an implausible implication of the Will Theory. Call this the Incapacity Undergeneration. It is an objection to the Will Theory as an account of both moral and legal rights.

The Will Theory also undergenerates right-ascriptions for inalienable rights. Perhaps my rights against servitude and against grievous bodily harm are of such a character that I cannot waive them. This means that I do not hold a power of waiver over them. Because the Will Theory requires that we hold powers over any claims in order for them to be rights, inalienable rights cannot be accounted for. MacCormick has nicely captured this problem. In relation to minor interferences, physical sports, or bona fide surgical operations, X can waive Y’s duty not to harm or interfere with her. The Will Theory can account for these rights. Yet, in relation to serious harm or operations by unqualified surgeons, X cannot waive Y’s duty not to act in such ways. Accordingly, the Will Theory cannot account for these more serious rights: “How odd that, as the [normative] protection is strengthened, the right disappears!” (MacCormick 1977, 197–98). Call this the Inalienability Undergeneration. It is an objection to the Will Theory as an account of moral and legal rights.

Finally, the Will Theory undergenerates rights that are not inalienable in general but are not alienable by their holders. The usual example offered is some of our rights pertaining to the criminal law. Crudely put, criminal law duties are not waivable by their correlative right-holders. My neighbor’s legal duty not to cut off my arm (correlating with my right that she not do so) is not waivable by me. But, at least on positivist views of the law, the state is able to waive this duty. The Will Theory implies that I do not actually hold this right against my neighbor. Call this the Inability Undergeneration. (Since the state can waive the duty, the Will Theory says the state holds the right. We return to this in section 5.1.)

The Inability Undergeneration contains rights that are alienable by others aside from the putative right-holder, whereas the Inalienability Undergeneration contains rights that are inalienable in general. Drawing the precise boundary between these two classes of undergenerations is going to be hard. It depends on whether we think certain criminal law duties could be waived by legal officials or whether they are inalienable in general. It is also unclear whether the Inability Undergeneration applies to moral rights pertaining to the criminal law. Perhaps the moral rights

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14It also precludes animals and, perhaps, the dead. Whether these are right-holders is more contentious.

15Some of the rest will be inalienable in general.

16For those with less positivistic views of the nature of the law, judges have the legal power to incarcerate people for long periods of time (or even execute people)—legal powers the individual likely will not have. Thanks to an anonymous reviewer for this.

17Or whether some other measure of control (e.g., powers 3–4) could be exercised. As an anonymous reviewer pointed out, it also depends on whether we see some instances of exceptions to general criminal-law duties as being equivalent to the duty’s being waived, or there being inbuilt exceptions in the duty’s content, or even the duty being permissibly infringed.
that individuals have pertaining to the criminal law are either inalienable (so captured by the Inalienability Undergeneration) or morally waivable by their holders, though, for practical reasons, not legally waivable. Alternatively, if the legal rights are justified, their holders do not have the moral power to waive the duties correlating to them. Regardless of which way we go on this question, there are some moral rights pertaining to the law that are not inalienable in general but are not waivable by their holders. For example, in countries with minimum wage laws, employers are under duties to pay their employees certain amounts; these duties are not waivable by potential employees, though they are waivable by the state.

Steiner thinks that the Incapacity Undergeneration is a moral objection to the Will Theory but that the Inalienability and Incapacity Undergenerations are conceptual objections because the Will Theory is “logically incapable of explaining how the undisputed existence of some perfectly enforceable duties [criminal law duties] implies rights at all” (Steiner 2000, 248). It is unclear why this conceptual point is not true of the Incapacity Undergeneration. The objection is not “Wouldn’t it be bad if children didn’t hold rights. How immoral of the Will Theory!” but “We take children to have rights just as we take adults to have rights with respect to the criminal law. The Will Theory logically precludes this.” For this reason, I see no reason to distinguish the character of the Incapacity Undergeneration from the Inalienability and Inability Undergenerations.

Steiner also suggests that the three dimensions along which the Will Theory undergenerates right-ascriptions suffer from “severely disabling circularity inasmuch as [they] simply presuppose the truth of the [Interest Theory]” (Steiner 1994, 66). However, they do not presuppose the Interest Theory but suggest that the Will Theory is overly restrictive.

With our three classes of undergenerations in place, the following three sections put forward a range of seemingly plausible ways that a defender of the Will Theory can respond, while laying clear the implications of those positions. We see there is a general problem. Either, we can keep the Will Theory faithful to its account of control as the grounds of rights, in which case the theory undergenerates right-ascriptions, or we can make the theory extensionally accurate but at the cost of obscuring the theory’s focus on control.

5. Being revisionary about rights

One might think that we need not refine the Will Theory in reply to our three classes of undergenerations, but simply draw out the Will Theory’s implications more carefully. Subsection 5.a examines how defenders of the Will Theory may respond in this way to the Incapacity and Inalienability Undergenerations. Subsection 5.b examines how they may respond in this way to the Inalienability Undergeneration.

5.a Being revisionary about right-holders

The Incapacity and Inability Undergenerations occur because someone who is intuitively not the right-holder is in possession of the relevant powers of demand and waiver. Why not think that it is these individuals—the holders of these powers—that possess the rights? With reference to the Inability Undergeneration, Steiner writes “there’s simply no obstacle to extending the application of the Will Theory to criminal-law duties and holding that, whereas civil law confers Will Theory rights on private citizens, criminal law (now) rests them in state officials” (2000, 250).

It is more tempting to say that it is not the state officials but society at large who is the right-holder, and that officials act as fiduciaries on society’s behalf. While comparatively more attractive, this view still has flaws. First, the objections I raise below apply equally. Second, the

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19This observation is also made by Graham (1996), though is treated quite differently.
Will Theory cannot, without alteration, make sense of fiduciaries. We consider such an amendment below (Will Theory 3), so I set it aside for now.

There are obstacles to thinking that criminal-law rights and the rights of agents without rational capacities are actually held by others. Both as a mark of first-order and theoretical intuitions, it is extremely counterintuitive. The right that correlates with your being under a duty not to break my leg seems to be my right, not some state officials’. I said that it is more tempting to think of the revisionary right-holder as being society. Perhaps, if you break my leg, you wrong society through breaking its laws in some sense, in addition to—or in place of—acting wrongly in an undirected sense. Nonetheless, you also wrong me in a way that is distinct from my being a member of society. Put differently, I have different grounds for complaint than society.

This is because being revisionary about right-holders in this way is inattentive to the directionality of duties. Take the Incapacity Undergeneration. Children, the mentally disabled, and individuals suffering from Alzheimer’s seem to have rights to the provision of certain goods and against certain interferences. Failure to respect duties pertaining to these entitlements seems to wrong those individuals. This feature marks that these duties are directed to the individuals under consideration. As we saw in the introduction, one is wronged by a duty’s violation only if one is owed that duty; if one is not owed a duty, one is not wronged by its violation.

There are two ways a defender of revisionism about rights might reply. First, they might welcome the implication and argue that it is the holders of the relevant legal powers (it is the legal officials, the guardians of children) who are wronged when these rights are violated (Hart 1955, 181). This is an implausible implication of being revisionary about rights. In Michael Thompson’s terms, we think of these individuals as “not just raw materials for wrongdoing, but someone whom someone might wrong” (2004, 352; emphasis in original).

Second, we might separate rights from wrongings. We might hold that some feature(s) grounds wronging and say, of that set of wronging, only those instances when an agent has normative control over the individual who wronged them are right-violations. Above, I distinguished two senses of grounding. This reply is closer to the second sort, on which all manner of things ground duties; it is when an agent has normative control over another’s duty that it becomes directed. This reply goes further, saying that all manner of things ground directed duties, infringements of which constitute wronging, and there is a further subset, those directed duties that agents have normative control over, that correlate with rights. Now, we might be skeptical of such a complicated picture because it appears ad hoc. Relatedly, we need to give an account of what makes a directed duty since the normative control that previously delineated directed from undirected duties now delineates rights from directed duties.

Further, there is a worry that the defender of the Will Theory has changed the subject in dissociating rights from directed duties. This implication can be seen by examining the following dilemma concerning the normative seriousness of right-violations. Suppose that one threatener is about to harm a child and a separate threatener is about to harm the child’s guardian. A defender of the view outlined above says that both individuals are wronged by their respective threateners. However, only the guardian is the holder of a right against the threateners’ actions. She holds both a right against her threatener’s action and a right against her child’s threatener. We could say that right-violations are normatively significant for the person who holds that right in addition to the fact that she has been wronged. Yet this implies, counterintuitively, that something more normatively significant happens to the guardian. Like her child, she is wronged; unlike her child, she has

\(^{20}\)Cf. footnote 31.

\(^{21}\)To some extent, this just repeats the Inability and Incapacity Undergenerations as presented in section 4. However, since Steiner suggests “there’s simply no obstacle to extending the application of the Will Theory to criminal-law duties and holding that […] criminal law (now) rests [rights] in state officials,” the point is worth making.

\(^{22}\)This is not the way Steiner would go. He characterizes rights as “essentially about who is owed what by whom” (2007, 459).
two rights violated, whereas her child has no rights violated. This is odd. Instead, we could say that right-violations are not normatively significant in addition to the fact that one has been wronged. Yet this means all of the normative work is being done by directed duties. Aside from being counterintuitive, we need not care about the Will Theory of rights anymore.

We have been proceeding on the assumption that a person is wronged only if they have a directed duty violated (often, correlating with a claim-right). We might abandon this assumption. This allows us to keep the Will Theory as an account of directed duties and rights. Nicolas Cornell thinks that we should separate rights from wrongs where rights concern reasons for action ex ante and wronging concerns complaint ex post (2015, 119). Cornell offers several cases in support of this verdict, including a third-party beneficiary case, a case in which harm results from an overheard lie, and a case in which a drunk driver kills someone’s child. Cornell believes that the third-party beneficiary, the overhearer, and the child’s parents are wronged, though they have no right violated. Because of this, he thinks: “parties may sometimes be put in a special moral position to complain and seek justification ex post, not by conduct over which they could have asserted any rights claim of their own ex ante, but rather by conduct that was wrong for other reasons, like violating someone else’s rights” (2015, 113). He thinks the Will Theory gives a good account of rights, and the Interest Theory gives a good account of wronging. Regardless of whether Cornell is correct that the third-party beneficiary, overhearer, and parents are wronged, a child or a person without rational capacities seem to be on the “rights” side of Cornell’s taxonomy. This is because what happens to the child or the person without rational capacities generates reasons for action ex ante.

We have considered whether one can respond to the Incapacity and Inability Undergenerations by being revisionary about who the right-holder is, attributing it to whoever is in possession of the relevant powers of demand and waiver. This line of thinking gets wrong who is wronged by a duty’s violation because it gets wrong the directionality of duties. We have also seen that separating rights from directed duties and separating rights and directed duties from wrongs in reply to this problem does not come without its own complications.

For the remainder of this paper, let us see how we might respond on behalf of the Will Theory without recourse to separating rights from directed duties or wrongs. In section 6, we see how we might revise the Will Theory to respond to the Incapacity and Inability Undergenerations. Before that, let us see how we might respond to the Inalienability Undergeneration without revising the Will Theory.

5.b Normative control

The Inalienability Undergeneration occurs because intuitively there are some rights that are not waivable either by their holder or by anyone else. Above, I gave the example of rights against servitude and against grievous bodily harm. Now, recall from the introduction that I said many think that I can have a liberty, against you, not to give you my pen, but be under a duty to give you my pen nonetheless. It is just that this duty cannot be owed to you (for example, it may be owed to a third party to whom I have promised my pen). Another example of this phenomena is: even if I free you from your duty not to take my pen, you may still be under a duty not to take my pen, owed to someone else (for example, you may have promised a third party that you will not take my pen). What is going on here is that I have removed the duty that you owed to me not to take my pen. Without removing all duties that you are under not to take my pen.

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23 An anonymous reviewer has suggested that this implication might not be too odd, especially if this normative significance is not conflated with moral wrongfulness. Yet, it is surprising that there is no straightforward connection between the normative significance of right-violations on the one hand and moral wrongfulness on the other.

24 Cornell does not discuss that Y might be under a directed duty to Φ to Φ, but X not have a claim right against her that she Φ (notable in its omission, e.g., [2015, 111]).

25 Cornell (2015) takes it that children have rights, so he requires some revision to the Will Theory.
We might use this machinery to try and explain inalienable rights on the Will Theory. Take the example of my legal right, against you, that you not inflict grievous bodily harm on me. Perhaps, were I to attempt to waive my right, I would free you from your duty, owed to me, not to inflict grievous bodily harm on me, but you remain under a legal duty not to do so nonetheless (for example, a legal duty owed to the state). Put differently, you are under (at least) two duties not to inflict grievous bodily harm on me. I have the power to waive one of those duties. Since I have the power to waive that duty, I have sufficient control over that specific duty to attribute a right to me on the Will Theory. Correlatively, this means you owe me a duty not to inflict grievous bodily harm on me. An important upshot of this is that if I waive the duty, you would not wrong me by inflicting grievous bodily harm on me, though you may still act wrongly.

What to make of this way of responding to the Inalienability Undergeneration on behalf of the Will Theory? Let me draw out three implications. First, the type of normative control that grounds rights is somewhat weaker than the picture with which the Will Theory began. Recall Hart’s insight that on the Will Theory, “[t]he individual who has the right is a small-scale sovereign to whom the duty is owed” (1982, 183). Given what we have said in this subsection, rights are not grounded in the control one has to make others’ actions permissible—the type of control that Hart’s language evokes. While this certainly does not count decisively against the Will Theory, it is an interesting implication of this line of thinking.

Now, one might say, other things being equal, X, the right-holder, has control over whether Y’s not Φ-ing is permissible. This allows defenders of the Will Theory to keep X’s making Y’s not Φ-ing permissible central on the account. Yet, we need to ask what is meant by other things being equal here. And, what must be being held equal is all other duties that Y is under; only in holding those other duties absent can we say that X has the power to make Y’s not Φ-ing permissible. There is still a departure from Hart’s picture of right-holders as small-scale sovereigns.

Second, this way of thinking might still strike one as extensionally inadequate. This way of thinking does allow that one can waive one’s rights and others’ directed duties not to perform certain actions, though the performance of those actions remain impermissible. Nonetheless, it implies that one can waive all of one’s rights and correlative directed duties owed to one. But, it seems possible that a legal system or moral theory may imply that inalienability is possible. For example, that one cannot waive others’ duties not to enslave one, seriously harm one, or even kill one. One could think, even to perform these actions in the knowledge that the right-holder consents would be to undermine the right-holder’s moral status—as someone to whom these sorts of things cannot be done—and thereby constitute a wrong to them. Of course, this is only a sketch of such a moral view. But it does not seem at all contradictory to have inalienable moral rights. That a legal system may have such implications is even easier to imagine.

Third, and somewhat relatedly, regardless of what one actually thinks of the extensional adequacy of this way of thinking, it implies that it is still conceptually impossible for one to hold a right that one is incapable of waiving. Correlatively, it is conceptually impossible for one to owe a

26Thanks to an anonymous reviewer for suggesting this way of responding to the Inalienability Undergeneration.

27On the importance of this kind of control, see Owens’s discussion of normative interests (2012). Might we be able to tell a similar story for moral rights? Perhaps I am able to free you from your moral duty, owed to me, not to inflict grievous bodily harm on me, and yet you still are under a moral duty not to inflict such harm on me. For example, perhaps one remains under an undirected duty not to inflict grievous harm on me despite my valid consent. Tadros endorses a view of this sort, though the details are somewhat different (2016, 265–80; esp. 273–74). However, a defender of this view owes us an account of why, on the one hand, the undirected duty not to harm is present in cases of grievous bodily harm despite one’s valid consent waiving the directed duty, while the undirected duty is not present in cases of nonserious harm and, on the other hand, why this does not simply mean the directed duty not to commit grievous harm remains present. I look to develop this in future work.

28Can we appeal to the fact that one has control over whether others wrong one in performing certain actions inasmuch as one has control over whether to leave the duty, owed to one, in existence? As an anonymous reviewer pointed out to me, doing so risks assuming in the analysis one of the features the account is trying to explain.

29Thanks to an anonymous reviewer for this suggestion.
duty to someone else that they are incapable of waiving. And ruling this out as a matter of conceptual fiat might strike one as a mark against the Will Theory. For example, the volenti non fit injuria principle states that to one who consents, no wrong is done. If the Will Theory is correct, there is no argument concerning the volenti principle—it simply falls out of the nature of rights. But this seems like an open question.

We have considered how problematic the Inalienability Undergeneration is without recourse to revising the Will Theory. Below, we turn to another way that a Will Theorist might respond to the Inalienability Undergeneration by revising the Will Theory (section 7).

6. What’s in being a power-holder?

We have seen that it will not do to be revisionary about rights. Perhaps:

Will Theory 3: For X to have a (claim-)right that Y Φ, against Y, either X or some other agent, Z, must have the power to alter Y’s duty to Φ on X’s behalf.

Will Theory 3 responds to the Incapacity and Inability Undergeneration. If there are inalienable rights, they cannot be rights on Will Theory 3.30

One might wonder how principled a refinement Will Theory 3 is. Hart came to endorse (something like) Will Theory 3.31 By way of supporting the refinement, he suggests,

since (a) what such representatives can and cannot do by way of exercise of such power is determined by what those whom they represent could have done if sui juris [of age] and (b) when the latter become sui juris they can exercise these powers without any transfer or fresh assignment; the powers are regarded as belonging throughout to them and not to their representatives, though they are only exercisable by the latter during the period of disability. (1982, 184n86)

Hart’s two points hold only for the Incapacity Undergeneration. So, one will either need to tell a different story to motivate Will Theory 3 with regards to the Inability Undergeneration or else find some other way of responding to that class of undergenerations. Further, it is not obvious that Hart’s first point, (a), holds for all rights. There are moral and legal powers that one can exercise when of age, though a fiduciary cannot exercise on one’s behalf. For example, when of age, one can consent to sexual intercourse with others. But fiduciaries cannot exercise powers of sexual consent. So, it is not true in general that “what such representatives can and cannot do by way of exercise of such power is determined by what those whom they represent could have done if sui juris [of age].”

Hart’s second point, (b), holds only for children who go on to develop sufficiently sophisticated rational capacities. Perhaps an analogous story could be told for those who lose their rational capacities, though the transfer of legal powers does not proceed by default as Hart emphasizes with children. Hart’s second point does not hold for those who will never develop sufficiently sophisticated rational capacities, such as those with severe mental disabilities. So, it is unclear how principled an account Hart has actually offered. This points to a more general problem with Will Theory 3 that is best got at through considering two further problems with this refinement.

First, Will Theory 3 weakens the grounding relation supporting the Will Theory.32 The idea behind the Will Theory is that rights protect agents’ will. However, in what way does a fiduciary acting on the claim-holders’ behalf manifest the protection of the claim-holder’s will? Perhaps, if we

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30Herein lies the difference between Will Theory 3 and Sreenivasan’s Hybrid Theory. The Hybrid Theory allows that no one hold the power over Y’s correlative duty provided this is in the right-holder’s interest (2005; 2010).
32Put differently, despite Hart’s attempts to the contrary, Will Theory 3 is ad hoc.
consider the rights of children, their fiduciaries are acting in ways that the child would will were she able. Yet, I think we are conflating what we take to be in a child’s will with what is in their interests in general. In this way, I am unclear of whether I can understand the child’s will in the same way as I understand an autonomous agent’s will. The autonomous agent’s will is morally salient because it allows her to shape her own life; this is not true of the child. This line of argument gets even more obscure when considering the rights of those with severe mental disabilities and agents who have permanently lost their rational capacities. 33

Second, and related, we might ask how Will Theory 3 interacts with the directionality of wronging associated with violating rights. On the Will Theory, if Y fails to respect X’s right, she wrongs X because she has failed to respect X’s will. The protection of X’s will grounds her right—it explains why her right has normative importance. Once we weaken the Will Theory so that the power might be held by another agent, Z, why does Y’s failing to respect X’s right not wrong Z instead of X? When Y fails to respect X’s claim over which Z holds a power, Y fails to respect Z’s will; on the Will Theory, failing to respect someone’s will was supposed to account for wronging. 34

This leads us to the more general problem with Will Theory 3: we need an explanation of how the fiduciary relationship links up with the Will Theory’s focus on normative control, as well as a way to determine when someone is holding a power as a fiduciary rather than holding a power as a right-holder. 35 Moving forward, those wanting to defend Will Theory 3 need to offer us such an account.

One way of cashing out this relationship between the right-holder and others holding powers on their behalf that is faithful to the Will Theory’s focus on normative control as the grounds of rights is:

**Will Theory 4:** For X to have a (claim-)right that Y Φ, against Y, either (i) X must have the power to alter Y’s duty to Φ, or (ii) that duty must be aimed at satisfying the minimum conditions necessary for the exercise of normative agency for X.

Will Theory 4 appears to deal with most of the undergenerations. First, perhaps children are afforded rights so that they can become normative agents; second, perhaps inalienable rights are aimed at protecting normative agency; third, perhaps the rights we have pertaining to the criminal law protect us in our capacity as normative agents.

There are at least three reasons to be skeptical of Will Theory 4. First, Will Theory 4 will not generate rights for agents without autonomy in prospect, so still undergenerates right-ascriptions for those with permanently compromised or deteriorating rational capacities. While Will Theory 4 lessens the scope of the Incapacity Undergeneration, it is still deeply problematic. Second, it is misplaced to say that, for example, children are afforded rights only insofar as those rights are aimed at satisfying the minimum conditions necessary for normative agency. (Note that I am not denying that these sorts of considerations ground some of the rights afforded to children.) Suppose that Dana is under a duty not to break Eric’s child’s arm. It is misplaced to say that Eric’s child has this right only insofar as, were Dana to break her arm, this would inhibit her ability to arrive at the minimum conditions necessary for normative agency. (If Eric’s child is young enough,

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33 Perhaps there are even some people who do not counterfactually have consciousness because their disability is essential to their identity.

34 An anonymous reviewer has asked whether this objection holds if we separate rights from wrongs, as discussed in section 5.a. If we separate rights from wrongs, one can explain why X is wronged even though it is not X’s will, but Z’s will, that is disrespected. This is because, since we have separated rights from wrongs, we are denying Y wrongs X only if Y disrespects X’s will. (We need an account of why Y does wrong X, but it seems plausible we can find one.) However, even if we separate rights from wrongs in this way, one may still think Y wrongs X if Y disrespects X’s will (i.e., we have denied the necessity claim but not the sufficiency claim). Since Y disrespects Z’s will in our example, this implies Y wrongs Z in addition to Y wronging X. If one wants to accommodate the idea that Y wrongs only X and not Z, one will need to completely dissociate rights from wrongs.

35 Thanks to an anonymous reviewer for pressing me on making this clearer. As they also pointed out, the objections I have raised against Will Theory 3 may well be pressed from the other direction as a defense of the unrefined version of the Will Theory instead of Will Theory 3.
will it inhibit her arriving at normative agency whatsoever?) To a great extent, the same seems true of inalienable and criminal law rights.

Third, and this is somewhat of a dialectical point, this account now seems structurally identical to the Interest Theory. Without having offered the Interest Theory, I cannot fully develop this criticism, but Will Theory 4 says that children are afforded rights so they can become beings who can lead autonomous lives. Because it is not the *exercise* of autonomy that grounds rights (vis-à-vis clause [ii]) but autonomy in prospect, proponents of Will Theory 4 require that rights are aimed at something valuable (autonomy). This looks structurally identical to the Interest Theory, though a version of the Interest Theory on which autonomy interests *exclusively* ground rights.

That Will Theory 4’s clause (ii) is structurally identical to the Interest Theory (with interests restricted to autonomy) does not mean it is false, though it does have dialectical implications on those arguments that can be used against the Interest Theory. And, in any case, the two previous objections (undergenerations pertaining to those without autonomy in prospect and the strange grounding of lots of rights) heavily speak against the view.

7. Different measures of control

Here are two further ways we might revise the Will Theory:

*Will Theory 5*: For X to have a (claim-)right that Y Φ, against Y, X must have *some* power over Y’s duty to Φ.36

*Will Theory 6*: For X to have a (claim-)right that Y Φ, against Y, either (i) X must have the power to alter Y’s duty to Φ or (ii) be specially placed to demand the enforcement of the right.37

There are some problems with Will Theories 5 and 6. First, Will Theory 5 cannot answer all the Inalienability and Inability Undergenerations since those who are intuitively the right-holders will not *always* hold any of the six powers identified above.38 (While the person who is the object of a criminal-law duty is well placed to see to it that the duty is enforced, she is not necessarily uniquely placed.) Will Theory 6 is in a somewhat better position on this score since one can argue that the right-holder is specially placed to demand the enforcement of the duty even if all powers of waiver are held by other parties or if the duty is inalienable.

Second, both Will Theories 5 and 6 cannot answer the Incapacity Undergeneration. This is because young children, for example, cannot exercise any of the six powers offered above, nor are they specially placed to demand the enforcement of their rights. So, it is not clear how far Will Theories 5 and 6 get us.

Third, Will Theories 5 and 6 seem at odds with the intuitive stringency of rights on the Will Theory. This is easiest to see on Will Theory 6. In discussion of the Inalienability Undergeneration, I noted MacCormick’s observation that agents hold the power to waive others’ duties not to inflict minor but not major suffering upon them. This means that an agent, X, satisfies conditions (i) and (ii) with respect to minor suffering and only (ii) with respect to major suffering. X’s right against

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36This view is relied upon in Steiner, especially his discussion of plea bargaining (1994, 70; 2000, 251).
38We might make the following argument, drawing upon Steiner (footnote 36). The set of rights that are inalienable may be smaller than first thought. For example, we might think that my right against grievous bodily harm is inalienable. But, Steiner suggests, the postviolation powers are alienable by state officials otherwise we could not make sense of plea bargains. With a combination of Will Theory 5 and Will Theory 3, we could say that citizens do hold rights pertaining to the criminal law because (WT5) state officials hold the relevant postviolation powers (WT3) on the citizen’s behalf. However, it is unclear whether the exercise of plea bargains is done so on the right-holder’s behalf rather than society’s. This argument is also vulnerable to the objections raised against Will Theory 3 and Will Theory 5. Finally, we may also take issue with Steiner’s understanding of plea bargaining.
major suffering is more stringent that her right against minor suffering. Rights are grounded in the normative control with which they endow their holder. It is not clear how these two features link up on Will Theory 6. We can tell a similar story with Will Theory 5. Suppose that X has only the power to waive enforcement of the duty (powers 5 and 6), but not the power to waive the duty. If X’s having normative control over Y’s correlative duty grounds X’s right, how can the right that manifests less of this be more important?39 This seems difficult to explain.

Fourth, there might be problems with Will Theories 5 and 6 depending upon how the normative control of the duty is distributed. Let us begin by seeing how this follows on Will Theory 5. Suppose that X holds only the powers to waive or demand enforcement of Y’s duty (powers 5 and 6), but Z holds the power to waive Y’s duty. The Will Theory says that rights are grounded in the normative control with which they endow their holder. Yet, while X has some control over Y’s duty—she is in control of what happens as concerns enforcement if Y violates her duty—she only has this control conditional on Z’s not waiving Y’s duty. And one might be skeptical of whether this level of control is sufficient for X to have a right over Y that Y Φ. Even if one thinks this level of control is sufficient, it is important to appreciate the somewhat weakened notion of normative control that grounds rights given the move to Will Theory 5.

Alternatively, perhaps it is Z that has control over the duty, and so it is Z that holds the right. First, this means Will Theory 5 will not help with the Inability Undergeneration (since it is those who are not, intuitively, the right-holder that have the power to waive the duty). Second, it is not even obvious it gets us the result that Z holds the right. Suppose that Z leaves the duty in existence for she wants Y to Φ. Y violates her duty. Z has no control over what happens now; X may simply waive Y’s duty to pay compensation. Again, one might be skeptical that this level of control is sufficient to endow X with a right. (Steiner thinks the right shifts from Z to X, though does not comment on its intuitive strangeness [2000, 247].)

Things are a little different for Will Theory 6, but the general point holds when X is only specially placed to demand enforcement of the right when someone else has the power to waive the duty correlative to the right. For example, suppose X wants to demand enforcement of the right, but Z waives the duty. More generally, we might be skeptical that X has sufficient normative control over the correlative duty in virtue of being specially placed to demand enforcement of the right if someone else has the power to waive the duty in the first place. At the least, again we should note the marked shift in the type of control over others’ duties that grounds rights on the Will Theory.

At this stage, one might reply that all this fourth objection shows is that we need to be more careful in formulating the right in question. For example, when X has the power to enforce Y’s duty, and Z has the power to waive Y’s duty, why not say: X has a (claim-)right that Y Φ conditional on Z not waiving Y’s duty.40

The first thing to note is this does not help us with the first three objections raised against Will Theory 5, and the second and third objections that hold against Will Theory 6. And, in any case, this proposal is not going to come without issues because the conditional nature of these rights might strike one as extensionally odd. Let us take two concrete examples.

Suppose we want to use Will Theory 5 to deal with rights correlating with criminal law duties. Sometimes victims of the violation of criminal-law duties have some measure of control over the enforcement of the duty after its violation by virtue of judges taking their wishes into account during sentencing. In virtue of this control afforded to victims, let us say they are endowed a legal right correlative with the criminal-law duty. However, this does not mean they have a right against the harm. Rather, they have a conditional right against the harm—conditional on both the duty’s not being waived and on their wishes being taken into account during sentencing (for if their wishes are

39Sreenivasan makes a similar point (Sreenivasan 2005, 261).
40Thanks to two anonymous reviewers for this suggestion.
not taken into account, they have no control over the duty). And, one might find it implausible that the right is conditional in this way.

Let us take another example. In section 4, I said that, in countries with minimum wage laws, employees have the right to a minimum wage. This is problematic for the Will Theory because the state has the power to waive employers’ duty to pay a minimum wage. On Will Theories 5 and 6, employees have the right to a minimum wage if they hold, for example, the power to demand enforcement of the duty. The fourth objection I have raised to Will Theories 5 and 6 is that they only have the control endowed by this power if the state does not waive employers’ duty to pay a minimum wage. And, this does not endow employees with the type of normative control necessary for rights on the Will Theory. The conditional strategy of replying to this objection would say that the right employees have is the right to a minimum wage conditional on the state not waiving the duty; this links the control employees do have with the content of their right. But, like with rights corresponding to criminal-law duties, the conditional nature of this right might strike one as extensionally odd: I am inclined to think employees have the right to a minimum wage. The right may well be more secure if the state did not have the power to waive the employers’ duty to pay a minimum wage, but this does not affect the content of the right.

Whatever one thinks of the extensional plausibility of these conditional rights, there is a more general problem that all of this discussion highlights: the more moves defenders of the Will Theory make in replying to our three classes of undergeneration (for example, by moving to either Will Theories 5 or 6, by drawing out that putative right-holders do have control conditional on others not waiving the correlative duties, and so on), the weaker the normative control the right-holder has over the duty. But, the insight of the Will Theory was supposed to be that rights endow us with normative control. Recall Steiner’s remark that rights, on the Will Theory, demarcate “spheres of practical choice within which the choices made by designated individuals […] must not be subjected to interferences” (Steiner 2000, 238). One might be skeptical of how much of this insight of the Will Theory remains true of either Will Theories 5 and 6. Put differently, how connected to the idea of normative control grounding rights are Will Theories 5 and 6?

It is difficult, then, to link the idea of normative control with there being a distribution of the powers one holds over another’s duty. It is even more difficult to see why the more stringent a right appears, the less normative control one has over it. This is exemplified with inalienable rights; we are only (elusively) specially placed to demand the enforcement of these right.41

8. Conclusion

In section 4, I introduced the Incapacity, Inalienability, and Inability Undergenerations. Sections 5 through 7 put forward a range of seemingly plausible ways that a defender of the Will Theory may respond, while laying clear the implications of those positions. At the end of section 4, I suggested that there was going to be a general problem with these responses: either, we can keep the Will Theory faithful to its account of normative control as the grounds of rights in which case the theory undergenerates right-ascriptions, or we can make the theory extensionally accurate but at the cost of obscuring the theory’s focus on control.42

We have seen that (5.a) if one wants to be revisionary given the undergenerations that plague the Will Theory, one faces trouble in attempting to account for the connection between rights, directed duties, and wrongings. That is, the counterintuitiveness of the undergenerations cannot be

41Rowan Cruft argues further that Will Theory 6 will be circular in many circumstances, for whether or not X is specially placed to demand the enforcement of another’s duties seems to depend upon whether we think the duty is owed to them in the first place (2019).

42A further point to note is that none of the revisions across sections 5 through 7 solved all three undergenerations. Each would have to be taken with other revisions, thereby intensifying the weakened focus on normative control as the grounds of rights.
explained away. And, we have seen that (5.b) emphasizing that one may be able to waive some of others’ duties not to \( \Phi \) without waiving all of others’ duties not to \( \Phi \) will still lead to under-generations of rights.

In section 6, we found that, on the one hand, while the idea of a fiduciary acting on a right-holder’s behalf may get a better extension than the standard formulation of the Will Theory, it obscures the connection between rights and wronging. On the other hand, we saw that though it may be faithful to the Will Theory’s account of the grounds of rights to see some rights as being grounded in securing the minimum conditions necessary for autonomy, this account is both stretched and itself extensionally inadequate.

Finally, in section 7, we saw that the Will Theory has trouble if revised to allow right-holders to have lessened powers of control over others’ duties. While this revision may achieve a better extension than the standard formulation of the Will Theory, again it is difficult to link these revisions up with the Will Theory’s focus on normative control as the grounds of rights.

Moving forward, defenders of the Will Theory need either to take a stand on this dilemma or else find some other way of dissolving the dilemma not discussed in this paper. For what it is worth, I am skeptical this dilemma can be dissolved. The central insight of the Will Theory is that rights endow their holders with control, but some rights just are not about control.

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Joseph Bowen is finishing up his PhD on the joint program at the University of St Andrews and the University of Stirling. He is interested in the nature of rights, wrongs, and harm. Relatedly, he is interested in the justification and limits of defensive harming.

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