

# **The Equivalence Thesis and the (In)significance of Violating Negative Rights**

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Death is often placed among the worse things to befall a human. What responsibility one might bear for bringing about death is, as a result, an important ethical question. Indeed the right to life is often regarded as the bedrock upon which all other rights of persons are supported.<sup>1</sup> This right to life is often thought to be a negative right—a right of non-interference—a right, more or less, not to be killed.<sup>2</sup> Additionally, many philosophers defend the Equivalence Thesis, according to which the bare difference between doing and allowing makes no moral difference. In the case of death, the Equivalence Thesis implies that a killing is not *by that very fact* at all morally worse (or better) than an allowing to die. Both the Equivalence Thesis and the view that the right to life is a negative right are plausible enough individually. In this paper, I argue that their conjunction implies an implausible (and generally unrecognized) third claim. Some doings (killings) will be morally equivalent to some allowings (lettings die) despite the facts that the killing will violate the right to life, the letting die will not, and these facts will be the only differences between the cases. In other words, defenders of these claims seem committed to the claim that violating one's right to life is morally irrelevant to the wrongness of the actions in question. That is simply implausible.

## **CASES**

James Rachels's *Active and Passive Euthanasia* (1975) began a conversation with far-reaching implications for end-of-life decisions. If there is no moral difference between killing and letting die, our general preoccupation with the killings rather

the allowings seems wrong-headed. While his main concern there was to argue that there was no basis for increased prohibitions upon the doings, Rachels highlighted the plausibility of the Equivalence Thesis in the process. This thesis holds that the bare difference between a doing and an allowing makes no moral difference. If the Equivalence Thesis is true, some common moral judgments and popular laws are without rational basis. I turn now to consider the case in favor of the Equivalence Thesis to elucidate the principle.

Recall Rachels's parallel cases (1975, 2-3) [my labels]:

*Bathtub 1:* Smith stands to gain a large inheritance if anything should happen to his six-year-old cousin. One evening while the child is taking his bath, Smith sneaks into the bathroom and drowns the child, and then arranges things so that it will look like an accident.

*Bathtub 2:* Jones also stands to gain if anything should happen to his six-year-old cousin. Like Smith, Jones sneaks in planning to drown the child in his bath. However, just as he enters the bathroom Jones sees the child slip and hit his head, and fall face down in the water. Jones is delighted; he stands by, ready to push the child's head back under if it is necessary, but it is not necessary. With only a little thrashing about, the child drowns all by himself, 'accidentally,' as Jones watches and does nothing.

After briefly considering resistance to the conclusion that Jones has done something just as immoral as Smith because Jones merely let his cousin die, Rachels concludes 'Again, if letting die were in itself less bad than killing, this defense should have at least some weight. But it does not. Such a 'defense' can only be regarded as a grotesque perversion of moral reasoning. Morally speaking, it is no defense at all' (Ibid, 4).

Challenges to the Equivalence Thesis have met with little success, but they have helped to clarify its force. Winston Nesbitt (1995) exploited the difference between act-evaluation (how bad is the killing vs. the allowing) and agent-evaluation (how bad is the killer vs. the allower) to gain traction. This failure instructively clarified that the Equivalence Thesis is a claim about events (specifically act-type events) rather than agents. When judging difference arguments, fix attention firmly on the events in question, not on the agents.<sup>3</sup>

Roy Perrett's criticism of Nesbitt's work showed that to disprove the Equivalence Thesis, one must rely on features *intrinsic to the case* (Perrett 139). Extrinsic factors may convince us that some killings are worse than some allowings to die, Perrett argues, but those facts do not damage the Equivalence Thesis. For instance, agential features like the killer's intentions cannot differ in the two cases because that difference is not an intrinsic feature of killing vs. letting die.<sup>4</sup>

Perrett's insight adds an additional hurdle to be cleared if one is to falsify the Equivalence Thesis. Suppose, then, that we take Rachels's and Perrett's work at face value, focus on act-evaluation of factors intrinsic to the cases. Doing this will still reveal cases in which a commitment to the Equivalence Thesis and a commitment to negative rights will suggest that violating rights is morally irrelevant.

### KILLING, STEALING, AND ENSLAVING

Accepting both that rights are negative and that there is no moral difference between doing and allowing is tantamount to accepting that violating rights makes no moral difference in itself. For instance, if the rights in question in the Bathtub cases are negative, this means, roughly, that the victim has a right not to be killed.<sup>5</sup> This view denies that the victim has a corresponding positive right—an enforceable claim to someone's efforts to save him. The Equivalence Thesis implies, with Rachels, that there is no moral difference between the killing and the letting die versions of Bathtub. Someone who accepts both the Equivalence Thesis and the view that rights are negative is committed to this third claim, then: violating the cousin's right to life makes no moral difference to the wrongness of Smith's actions. Smith kills his cousin; Jones allows his to die. Smith violates his cousin's right to life, but Jones doesn't.<sup>6</sup> Thus, Smith violates the right (by killing his cousin), Jones does not (by letting his cousin die), and despite this fact, Smith and Jones have done something equally wrong. The rights violation is irrelevant morally.

The case of killing is the most straightforward considered in this paper: involving the most plausible candidate for a negative right, including Rachels's own example. Yet the conclusion that the rights violation fails to make one worse than the other simply seems implausible. The case of killing is not, however, the only one that will demonstrate this strange commitment.<sup>7</sup> Consider, for instance, the case of Mail 1 and Mail 2.

*Mail 1:* Andrews and her colleague, whom Andrews perceives as a rival, stand to gain \$200 each in professional development money by submitting their signed forms certifying that they have completed the work. On the evening before the deadline, in order to make her rival's life more trying, just before the colleague's form would be being picked up by campus mail, Andrews sneaks into the office, takes her colleague's form, and throws it behind a cabinet so it looks like an accident. Andrews gains her \$200, but her colleague does not.

*Mail 2:* Brown and her colleague, whom Brown perceives as a rival, also stand to gain \$200 each in professional development money. On the evening before the deadline, in order to make herrival's life more trying, just before the colleague's paperwork would be picked up by campus mail, Brown sneaks into the office, prepared to throw the form behind a cabinet and 'lose' it. However, just as she enters the office, her colleague's form is blown off the pile by a gust of wind from an open window. With a final flutter, the form slips behind the cabinet, escaping the notice of the mail carrier and becoming 'accidentally' lost. Brown gains her \$200, but her colleague does not.

Hold all appropriate features consistent: Brown and Andrews share intentions, motivations, and the like. In fixing all the agential features, the cases should elicit (if we accept the Equivalence Thesis) judgments analogous to the Bathtub cases: Andrews's concealing is no worse than Brown's allowing the paperwork to disappear. If we accept also that a right to property is a negative right, then we must admit that Andrews violates the right to property but Brown does not. Here the strange commitment reveals itself: the fact that Andrews violated her colleague's right to property and Brown did not makes no moral difference to their action. Violating the right to property is itself irrelevant to the wrongness of Andrews's action.

The right to liberty is a third candidate to demonstrate this strange commitment.<sup>8</sup> Consider the following Cave cases then:

*Cave 1:* Young has always wanted to detain a particularly annoying acquaintance. One day while on a hike, Young sees his acquaintance enter a cave with a gate whose controls are on the exterior of the cave. Knowing that the gate will open automatically in 24 hours, Young sneaks up to the cave entrance, pulls the lever, and then slinks off before his acquaintance can see that Young pulled the lever.

*Cave 2:* Zamora has also always wanted to detain an annoying acquaintance. Zamora sees his acquaintance enter a cave similar to that in Young's case. Zamora sneaks down, intent upon springing the control and imprisoning his acquaintance. However, just as he reaches for the control, Zamora sees the gate fall without his interfering. To his delight, he did not have to get involved. Knowing that the gate will open automatically in 24 hours, Zamora slinks off before his acquaintance can see him.

### **SOME ATTEMPTS TO RESIST THE IMPLICATION**

The conjunction of the Equivalence Thesis and the view that rights are negative

implies the moral irrelevance of rights violations. If it makes no moral difference whether rights are violated, then consider how certain pleas for help would now be similarly irrelevant: ‘I have a right to be here!’ ‘It’s my body!’ Such rights talk is at the foundation of much work in social justice. If violating those rights is morally irrelevant, work in social justice currently relies upon an undermined foundation. Avoiding committing oneself to the claim that rights violations are morally irrelevant is, thus, desirable. There are some straightforward ways to achieve the task. One can reject the Equivalence Thesis, or argue that the cases introduce facts extrinsic to the argument and so violate the Bare Difference approach, or reject the view that rights are natural as well as negative. Alternatively, one could simply accept the thesis and prepare for the work of revising the liberal worldview. I shall consider each of these possibilities.

Might we reject the Equivalence Thesis? Not all who hear it accept it, and Rachels offers cases to convince those people that they are mistaken in resisting.<sup>9</sup> There are some apparent, important differences between the doing and the allowing cases. It would be just to offer restitution for the doings, but perhaps not in the cases of allowing. The Bathtub cases obscure this fact, because the person to whom restitution would most obviously be due is now dead. The Mail cases should make clearer the role of restitution: Andrews would surely owe her colleague restitution for depriving her of \$200. She stole that money by taking the paperwork that guaranteed the money to which her colleague had title as property.<sup>10</sup> Brown would not obviously owe restitution to her colleague. It would be very kind of her render the money, but it would not be unjust to withhold it. If this point is right, then Smith owes restitution as a matter of justice, but Jones would be under no such moral obligation.<sup>11</sup> Similarly, Young would owe restitution for losses suffered. Though Zamora may be legally responsible for violating Duty to Assist laws, he would not owe restitution as a matter of justice. These points—the violation of the right itself, the judgment of many who deem the cases different, and the unequal demands of justice—suggest that the Equivalence Thesis is on unsecure footing.

A second tactic to avoid the implication is by arguing that these examples have violated the Bare Difference approach, so they are not legitimate for consideration of the doing vs. allowing distinction.

The introduction of rights talk is an addition to the original cases. If we are to test the Bare Difference between killing and letting die, then introducing the fact that some subset of these cases (at least those discussed here) will be rights violations, while the allowings will not, introduces a potential confound, the Equivalence Thesis supporter might argue. No longer are we comparing mere doings to allowings, killings to lettings die. We are instead comparing doings-with-rights-violations to allowings-without-rights-violations. This, the Equivalence

Thesis supporter can argue, is simply to mistake the terms of the debate.

This line of thought is not unproblematic. In the first place, one must tread carefully here, as the first example comes directly from the champion of the Equivalence Thesis. Moreover, if rights in question are not only negative but also *natural rights*, they would seem to be features that are necessary to describing the cases fully. Notice that moving from Bathtub 1 to the claim that Smith violates his cousin's right to life required no additional premises. Few would deny that the rights violation is a real characteristic of the case. The central claim in this paper is that the commitment to the problematic thesis arises not from accepting the Equivalence Thesis but from accepting the Equivalence Thesis in conjunction with the negative rights view. If the negative rights are natural rights, it is difficult to argue that anything new has been added to the cases: reminding the readers that the cousin has a right to life is not a new factor (as was the existence of a DNR on page 3). There is promise to arguing that the rights-violations are no further facts, which would forestall the challenge that rights are new additions, in violation of the Bare Difference approach.

This previous paragraph makes it clear that one might avoid the implication by denying that the rights in question are natural or negative rights. If one denies that the right to life is natural, one can coopt Perrett's response to Nesbitt mentioned previously: introducing non-natural rights is an extrinsic feature of the situation. If rights are natural, then the fact that someone has rights will be an intrinsic feature of theirs. We will not be able to fully explain what a person, like the cousin is, without reference to his personhood—and natural rights. Likewise, the fact that a particular killing is targeted against a person—with rights—and not against a thing lacking rights will be an intrinsic feature of the situation.<sup>12</sup> To exclude this fact, we omit a property of the situation that cannot be eliminated and still exhaustively spell out the moral import of the situation.

Perhaps rights are not merely negative. Because negative rights are rights of non-interference, doings often violate those rights in cases where otherwise analogous allowings do not. So someone who accepts Rachels's Bathtub judgments can accept also that the right to life is a positive right—a right to receive something from someone. In this case, because Jones was on hand and could easily have saved his cousin with little effort or risk to himself, Jones had an enforceable moral claim on Jones's life-saving effort.<sup>13</sup> But, so the case goes, Jones denied his cousin that effort, so Jones's inaction violates his cousin's right to life, just as Smith did to his cousin.

A final method is to embrace the implication and explain away its strangeness. Perhaps the rights violation does not make the doing worse than the allowing. This fact does not mean that the rights violation is morally irrelevant. Someone could accept the Equivalence Thesis and the negative rights view, could accept Rachels's judgments in the Bathtub cases, could even accept the view that the doing but not the allowing generates an enforceable claim to restitution, and still deny that the

difference is a difference that makes the one action worse than the other. The defender of such a move could argue that the killing and the letting die are complete when the cousin dies (and when the paper flutters behind the cabinet, and when the gate shuts). The rights violation matters, as the debt will be outstanding in the case of the killing/stealing/imprisoning (but not the allowings) until it is fulfilled. This fact is not, however, a fact that makes the doing worse than the allowing. The debt is a separate entry in the agent's ledger; so, Smith, Andrews, and Young acquire an additional obligation, but Jones, Brown, and Zamora do not. None of this reflects on the wrongness of the actions that led to the obligations.

This paper has not argued that the Equivalence Thesis is false or that the negative rights view is false. This paper has, however, demonstrated that commitment to the conjunction of these views commits one to a puzzling and implausible third claim. The fact that an action violates a negative right does not, in itself, make any moral difference to the wrongness of an action. Concretely, in accepting these theses, one is committed to the claim that the fact that someone violated a right to life (or liberty or property) makes no moral difference to the wrongness of their action.

## NOTES

1. It is worth noting that Nozick, a defender of negative rights, argues that property rights come before the right to life (1974, 179n).

2. Alan Gewirth (2001) explains the difference between negative and positive rights in this way: 'negative rights entail negative duties, i.e., duties to forbear or refrain from interfering with persons' having the objects of their rights' while positive rights 'entail positive duties, i.e., duties to help persons to have the objects of their rights' (322). He lists a right to life as a plausible negative right and a right to education and health care as plausible candidates for positive rights (Ibid.). The fundamental distinction, as I use the term, is between rights of forbearance (non-interference) and rights of performance (recipience). Nozick (as in footnote 1) employs 'right' in the negative sense throughout *Anarchy, State, and Utopia*.

3. I take it for granted that readers are familiar with the logic of Bare Difference Arguments. Readers unfamiliar with the term should see Oddie's excellent treatment (1997) for a fuller discussion of Bare Difference Arguments.

4. Similarly, perhaps, the existence (or lack thereof) of a Do Not Resuscitate order would be extrinsic to the question of killing and letting die, because one case—the knowing killing—would fall outside the bounds of the agreements, while knowingly letting die in accordance with the DNR order would be following the patient's wishes. This is not an intrinsic difference between the cases.

5. As Judith Jarvis Thomson (1971) has shown, this is probably an inaccurate way of expressing the right. It is perhaps right not to be killed unjustly, or at least a right not to be killed under certain (extensive) conditions.

6. For if the cousin has an enforceable claim to Jones's life-saving assistance, that simply means that Jones's cousin's right to life is a right of recipience—a positive right. But this is precisely what the view that the right to life is negative denies.

7. The rights to property and liberty (and any other plausible negative right) will similarly demonstrate a looming commitment to the irrelevance of rights violations.

8. I assume that this right has centrally to do with restricting people's actions and behavior, in particularly their ability to 'move,' broadly construed to include physical and social movement.

9. Rachels pointed out the ruling by the House of Delegates of the AMA's 1973 policy on active vs. passive euthanasia as an example of the commitments in action (1975, 78). Plausibly, the delegates' ruling demonstrated a commitment to denying the Equivalence Thesis.

10. It seems that one can steal without anyone benefiting from the theft.

11. Of course, the fact that no one but Smith would know how the death came about would be irrelevant to Smith's moral responsibility and moral obligations for the death.

12. As in Langdon and Lewis's account (1998).

13. Thomas Mappes seems to defend this sort of view (2002, 215). He writes that someone who needs a rope to save himself from quicksand is 'entitled to [the] assistance' of a bystander who could easily hand the rope to the sinking person.

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