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Matthew HAMMERTON

Singapore Management University, [mhammerton@smu.edu.sg](mailto:mhammerton@smu.edu.sg)

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# Deontic Constraints are Maximizing Rules

Matthew Hammerton<sup>1</sup> 

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## 1 Introduction

A deontic constraint prohibits performing an act of a certain type even when performing it is the only way to prevent others performing more acts of that type. Commonsense morality tells us that there are deontic constraints. For example, suppose that the only way to prevent others killing two innocent people is to kill a random innocent person yourself. Commonsense morality tells us that it is wrong to kill in these circumstances, and thereby endorses a deontic constraint on killing innocent people.

Because they are commonsensical, deontic constraints have been endorsed by many moral philosophers and incorporated into many moral theories.<sup>1</sup> However, philosophers endorsing deontic constraints have not always been clear about the exact form of the constraints they endorse. Yet, for any deontic constraint, there are several logically distinct rules that could produce that constraint. In this article I point out that some of these logically distinct rules are maximizing rules while others are non-maximizing rules. I then argue that the non-maximizing rules have a problem with moral advice. They appear to fail to give moral advice in cases where commonsense morality demands it. I look at several attempts to solve this problem and argue that they are all unsatisfactory. On these grounds, I conclude that if there are deontic constraints then they are maximizing rules. I then show that, given this conclusion, a strong case can be made that consequentialism provides the best account of deontic constraints.

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<sup>1</sup> For two very different ways of doing this see the deontic constraint friendly moral theories of Francis M. Kamm, *Intricate Ethics: Rights, Responsibilities, and Permissible Harms*. (Oxford: Oxford University Press, 2007) and Douglas Portmore, *Commonsense Consequentialism: Wherein Morality Meets Rationality* (New York Oxford University Press, 2011).

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✉ Matthew Hammerton  
mhammerton@smu.edu.sg

<sup>1</sup> School of Social Sciences, Singapore Management University, 90 Stamford Road, Singapore 178903, Singapore

## 2 Interpreting Constraints

For any deontic constraint, there are several logically distinct rules that could produce it. To demonstrate this, I will first consider a constraint on promise-breaking and then generalize to all constraints. Consider the following case:

**TAXI:** Sylvia has promised to attend her friend's birthday party at 2 pm. She hails the last available taxi and is about to head off when she realizes that two nearby strangers also want the taxi. Each stranger also needs to be somewhere at 2 pm to keep a comparable promise to a friend. By chance the two strangers are heading to the same location, whereas Sylvia's meeting is at the other end of town. If she takes the taxi for herself then she will keep her promise to her friend, but the two strangers will break their promises. If she allows the strangers to take the taxi then they will keep their promises but she will break hers.

To endorse a deontic constraint on promise-breaking is to hold that we must not break our promises even in cases like TAXI where doing so can prevent more promise-breaking by others. There are several logically distinct rules that give this verdict. Here are four such rules:

- (1) Each agent must not break promises.
- (2) Each agent, when she has the ability to do so, must not break promises.
- (3) Each agent must minimize her own promise-breaking.
- (4) Each agent, at each moment, must minimize her promise-breaking at that moment.

Each of these rules requires Sylvia to keep her promise in TAXI. Yet they are logically distinct rules because in the following two cases none of these rules give identical deontic verdicts:

**SYNCHRONIC:** Sylvia has independently made comparable promises to Asha, Beth, and César. Each promise requires Sylvia to perform a specific task now. However, it is not possible for Sylvia to perform all three tasks simultaneously. Although the tasks owed to Asha and Beth can be performed simultaneously, the task owed to César cannot be performed in conjunction with the others. Thus, Sylvia has two options: (i) break the promise to César but keep the promises to Asha and Beth, (ii) keep the promise to César but break the promises to Asha and Beth.

**DIACHRONIC:** Sylvia has independently made comparable promises to Asha, Beth, and César. The promise to César is due now, whereas the promises to Asha and Beth are due next week. Unfortunately, an unforeseen complication has made it impossible for Sylvia to keep all three promises. She has two options: (i) break the promise to César now, which will allow her to keep the promises to Asha and Beth next week, (ii) keep the promise to César now, in which case she will break the promises to Asha and Beth next week.

According to rule (1), Sylvia must not break promises. In both SYNCHRONIC and DIACHRONIC Sylvia has two options and each option involves breaking a promise. Therefore, rule (1) gives the verdict that Sylvia does the morally wrong thing whatever option she takes in these cases. If she takes the first option she does the wrong thing by breaking a promise to César. If she takes the second option she does the wrong thing by breaking promises to Asha and Beth. Thus, rule (1) classifies SYNCHRONIC and DIACHRONIC as strong moral dilemmas (“strong” because the dilemma cannot be resolved by pointing out that one of Sylvia’s conflicting moral duties overrides the other).<sup>2</sup>

According to rule (2), Sylvia must not break a promise whenever she has the ability not to break it. To derive a verdict from (2) in SYNCHRONIC and DIACHRONIC we must first ask whether Sylvia has the ability to keep her promises in these cases. On one possible view, Sylvia does have the ability to keep her promises because doing the tasks required to keep her promise to César is within her powers, and doing the tasks required to keep her promises to Asha and Beth is also within her powers. On this view, (2) gives the same verdict as (1) in SYNCHRONIC and DIACHRONIC—the verdict that Sylvia is in a strong moral dilemma. According to a second possible view, Sylvia does *not* have the ability to keep her promises in SYNCHRONIC and DIACHRONIC. For, although she has the ability to keep each promise considered alone, she lacks the ability to keep all three promises considered together, and the latter is the relevant ability. On this view, (2) gives no deontic verdicts in SYNCHRONIC and DIACHRONIC. It classes Sylvia’s action as neither right nor wrong in these cases because the ability clause is not met.

I will not take a stand here on which of these two views is correct. However, it’s important to note that on the first view rule (2) gives the same deontic verdicts as (1) in all cases discussed in this article. Thus, I will ignore this interpretation of (2) as anything I might say about it will already be covered by what I say about (1). Henceforth, whenever I mention (2) I will interpret it according to the second view where it sometimes gives a different deontic verdict from (1).

According to rule (3) Sylvia must minimize her overall promise-breaking. In both SYNCHRONIC and DIACHRONIC Sylvia does this by taking the first option of breaking a promise to one and keeping promises to two others as this option results in her breaking fewer promises overall.

According to rule (4) Sylvia must minimize her present-moment promise-breaking. In SYNCHRONIC Sylvia does this by taking the first option of breaking

<sup>2</sup> However, note that there is a possible interpretation of (1) in which DIACHRONIC is not a strong moral dilemma. On this interpretation, when Sylvia keeps her promise to César she does not violate (1) because she is not, at that moment, breaking any promises. All we can say is that she is making it the case that she will later violate (1) by breaking her promises to Asha and Beth. But making it the case that you will violate (1) is not the same as actually violating it. Thus, on this interpretation, DIACHRONIC is not a case in which an agent does the morally wrong thing whatever she does. However, anyone who interprets (1) in this way would need to combine it with an additional rule requiring agents not to make it the case that they will later violate (1). And (1) and this additional rule would together entail a strong moral dilemma in DIACHRONIC. Therefore, interpreting (1) in the way mentioned above will still ultimately result in a moral dilemma.

a promise to one and keeping promises to two others as this option results in her breaking fewer promises in the present moment. In DIACHRONIC Sylvia does this by taking the second option of keeping the promise due now to one and breaking two promises due later to others. Thus, although (3) and (4) give the same deontic verdict in SYNCHRONIC, they give different deontic verdicts in DIACHRONIC.

Rules (1), (2), (3), and (4) are not the only possible rules that produce a deontic constraint on promise-breaking. However, other possible rules that produce such a constraint appear to be relevantly similar to (1)–(4) with respect to the verdicts they will give in cases like SYNCHRONIC and DIACHRONIC. For example, (1)–(4) result in absolute constraints on promise-breaking, yet some moral philosophers prefer a “moderate” account of constraints that only prohibits promise-breaking when the harm that it prevents falls below some specified threshold. Thus, in place of (1) a moderate might prefer:

(1\*) Each agent must not break a promises unless doing so is the only way to prevent a quantity of harm that exceeds the relevant threshold.

However, the moderate would still have to choose between (1\*) and other similarly adjusted variants of (2), (3), and (4).

Likewise, some moral philosophers who endorse a constraint on promise-breaking might prefer to cash it out in terms of a more general constraint on doing harm, or intending harm, or violating someone who is inviolable, or imposing threats on those who are unthreatened, etc. However, even if the constraint is conceived at this more general level the same four options present themselves. For example, if it is conceived in terms of inviolability then (1) could be replaced with:

(1\*\*) Each agent must not violate those who are inviolable.

However, the supporter of inviolability would still need to choose between (1\*\*) and other similarly adjusted variants of (2), (3), and (4).

Recently, Tom Dougherty has argued that it is possible to produce deontic constraints using agent-neutral rules.<sup>3</sup> For example, Dougherty suggests that in place of the agent-relative (1) we could use the following agent-neutral rule:

(1\*\*\*) Each agent must ensure that no one breaks a promise in order to prevent more promise-breaking by others.

Whether (1\*\*\*) adequately captures the relevant deontic constraint is disputed.<sup>4</sup> However, supposing for the sake of argument that Dougherty’s strategy is successful, the same four options again appear to be available. There are also agent-neutral versions of (2), (3), and (4) that use Dougherty’s strategy, and anyone using his strategy must choose between these four variations.

I am not aware of any further possible formulations of a deontic constraint on promise-breaking that are not covered by the options I discuss above. Therefore, I

<sup>3</sup> Tom Dougherty, “Agent-Neutral Deontology,” *Philosophical Studies*, vol. 163, no. 2 (2013): 527–537.

<sup>4</sup> See Matthew Hammerton, “Is Agent-Neutral Deontology Possible?” *Journal of Ethics and Social Philosophy*, vol. 12, no. 3 (2017): 319–324.

conclude that however one decides to formulate a constraint on promise-breaking, it will be some variant of rules (1)–(4).<sup>5</sup> I cannot back this claim up with an impossibility proof showing that it is impossible to produce a deontic constraint on promise-breaking that is not a variant of rules (1)–(4). Impossibility proofs are notoriously difficult. However, I have considered the main variations moral philosophers employ when formulating deontic constraints and I have shown in each case that the variations still result in a set of options relevantly similar to (1)–(4). Therefore, it is reasonable to hold that the burden of proof is now on anyone wanting to reject this step in the argument. To justify rejecting it they must produce a possible rule that is a deontic constraint on promise-breaking and yet is not a variant of (1)–(4). Furthermore, to undermine the arguments that follow, this possible rule must be a non-maximizing rule that can escape the moral advice problem I discuss in §4 and §5.

So far I have been discussing a deontic constraint on promise-breaking. However, my argument can be generalized to show that, for any deontic constraint, there are four logically distinct rules corresponding to (1), (2), (3), and (4) that could constitute that constraint. This is because for any deontic constraint cases like SYNCHRONIC and DIACHRONIC can be constructed. For example, consider a deontic constraint on killing. A DIACHRONIC-like case is one where I must choose between killing one person now or several people later. A SYNCHRONIC-like case is one where I must choose between killing one person now or several people now. Below I will continue to use examples involving promise-breaking. However, the reader should keep in mind that my arguments apply to all deontic constraints.

### 3 Maximizing Rules

Any rule that produces a deontic constraint on promise-breaking will be some variant of rule (1), (2), (3), or (4). When we examine rules (1)–(4) we notice an important structural difference that separates the first two rules from the second two. Rules (3) and (4) are maximizing rules; they require agents to bring about some quantity to the greatest degree they can. By contrast, (1) and (2) are not maximizing rules. They require agents to simply refrain from performing certain acts, without giving them any quantities to be maximized.

In the next section I will raise a problem for non-maximizing rules like (1) and (2). However, before doing this I want to address an objection against (3) and (4) as plausible interpretations of a deontic constraint. Critics of these rules sometimes point out that they appear to classify agents as acting rightly when we want to be able to say that they have done the wrong thing and hold them morally responsible. For example, suppose in SYNCHRONIC that Sylvia takes the first option of breaking one promise rather than the second option of breaking two. According to (3) and (4) Sylvia acts rightly when she takes this option. The critic might point out that

<sup>5</sup> My conclusion has one minor caveat. One of the supplementary rules I consider in §5.2 can be formulated as a fifth rule that is not a variant of (1)–(4). Discussing this possibility at this stage would take us too far afield so I leave discussion of it for §5.2.

Sylvia is nonetheless still breaking a promise to someone and thereby wronging this person. Doesn't classifying her act as morally right fail to account for this?

The problem with this objection is that it overlooks what can be said about Sylvia's wrongdoing. If Sylvia is morally responsible for being in circumstances in which she cannot keep all her promises, then she must be responsible for something she did in the past that caused her to be in such circumstances. For example, perhaps she recklessly made promises that it was impossible to keep. Or, perhaps she procrastinated when she needed to take steps that were necessary for keeping all her promises. Whatever her past irresponsible act was, rule (3) will locate her wrongdoing at the time and place of that act. For example, performing the act of making promises you cannot keep is failing to minimize your promise-breaking. If this is what Sylvia did then, according to (3), she acted wrongly at the time she made those incompatible promises and can be blamed for that action. Similarly, not taking the steps necessary for keeping your promises is also failing to minimize your promise-breaking. If this is what Sylvia did then, according to (3), she acted wrongly at the time she failed to take these necessary steps and can be blamed for this. This picture of Sylvia's wrongdoing is attractive because it allows us to acknowledge that she is performing the best act available to her in the present circumstances whilst also pinpointing those moments in the past when she failed to act as she should have. It also sensibly tells us to blame Sylvia for her past wrongdoings, which have caused her present promise-breaking, rather than blaming her for her present, morally sensible, conduct.

A critic might respond here by arguing that there is always some blame directly tied to the performance of the act of promise-breaking that is separate from blame for the past wrongs that cause it. Perhaps Sylvia should be blamed and feel guilt for making incompatible promises. However, when she later breaks one of these promises, causing harm to one of her promisees, isn't further blame and guilt appropriate for her? The critic will claim that it is, suggesting that this reflects a further wrong that she commits at the moment she breaks her promise.

The problem with this response is that there are examples in which additional blame and guilt at the time of the promise-breaking appears inappropriate. Suppose, I confess to you that I will soon break a promise to you because I failed to do what was necessary to ensure that I keep it. You blame me for this failure, I acknowledge guilt, express contrition, and offer restitution. You then forgive me and we both agree that the matter is resolved. When, at a later time, I actually break the promise in question it doesn't seem appropriate for there to be additional blame or guilt beyond what was already acknowledged. This suggests that the blame and guilt is tied to the wrong act that causes the promise to later be broken. If, in other cases, it seems appropriate to have blame and guilt when the promise is broken, this is probably because an adequate amount of blame and guilt has not already been expressed.<sup>6</sup>

<sup>6</sup> One reason why this might be the case is that, until the actual promise is broken, the identity of the victim and quantity of the harm done may be unclear. For example, if I make incompatible promises I may know that I have done something wrong but not be sure who I have wronged by this act until I am actually in a position to determine which promise I ought to break. Once I have identified the promisee whose promise will not be honoured I can then acknowledge that my act of making incompatible promises wronged her and she, qua person wronged by my act, can blame me.

So far, I have used the example of promise-breaking. However, the point applies to other constraints as well. Suppose I perform an act that makes it inevitable that I will steal from you (e.g., I set up a computer program to defraud money from your account that I am unable to deactivate). It seems plausible to hold that I do the wrong thing at the moment when I set up the program rather than at the moment when the program takes the money from you. This is further confirmed by noting that we could resolve the matter through a process of admitting guilt, showing contrition, and accepting forgiveness prior to the program taking your money.<sup>7</sup>

The discussion above shows how (3) can account for the moral responsibility of an agent who is unable to keep all her promises. Because (4) is focused solely on the present-moment, (4) is unable to offer a similar account of past wrongdoing. However, on independent grounds it can be seen that (4) needs to be supplemented with another rule to address acts related to future promise-breaking. For example, suppose that I can perform an act now that will prevent me breaking a promise tomorrow and nothing else of moral significance is at stake. Clearly, I do something wrong if I fail to perform this act. Yet (4) does not give this verdict and so anyone accepting (4) must endorse an additional rule that explains the wrongness here.<sup>8</sup> Whatever this additional rule is, it will give an account of the agent's past wrongdoing that is similar to the account given by (3). For example, it will explain how an agent does the wrong thing when she makes incompatible promises, or fails to keep all of her promises. Therefore, when (4) is suitably supplemented, it can, like (3), point to the past actions of an agent to explain how she is morally responsible for her promise-breaking.

Summing up, maximizing rules like (3) and (4) do not have a problem with holding agents responsible for their wrongful acts. On the contrary, these rules offer a very plausible account of the timing of the agent's wrongdoing. They allow that an agent might be performing the right act in the present, whilst pinpointing the moments in the past when the agent acted wrongly.

#### 4 Non-Maximizing Rules and Moral Advice

Some philosophers who endorse deontic constraints prefer to interpret them as non-maximizing rules like (1) and (2) rather than as maximizing rules like (3) and (4). One feature of (1) and (2) worth noting is that, unlike (3) and (4), they fail to give agents any practical moral advice on what they should do in SYNCHRONIC and DIACHRONIC. According to (1), these cases are moral dilemmas where, whatever the agent does, she does the morally wrong thing. Knowing that all my options are morally wrong does not give me any advice on which option to take. According to

<sup>7</sup> It might even apply to cases of killing, although these are harder to conceive of. Suppose that I program a drone to kill you and then set it loose. Plausibly, I do the wrong thing at the moment I set the drone loose rather than at the moment, perhaps days later, when the drone hunts you down and kills you.

<sup>8</sup> There is a compelling argument showing that (3) is the only suitable rule to use here. However, this claim is not needed for the argument that follows and would take us too far afield. Therefore, I will not present it here.



rule (2), in these cases the constraint gives no deontic verdict—classing the options available as neither right nor wrong. Again, no moral advice is offered.

In general, it is philosophically controversial whether morality is uniquely action-guiding. Some hold that morality must be uniquely action-guiding, always advising an agent on what to do whenever there are things of moral significance at stake. Others reject this view and accept that it is plausible and even necessary that morality is sometimes unable to give advice. However, the objection I want to raise against (1) and (2) does not involve the controversial claim that the former view in this debate is correct. Rather the objection is that, even if morality sometimes rightly fails to give agents moral advice, it is implausible that it would give no moral advice in SYNCHRONIC and DIACHRONIC.

To see why the lack of advice might be problematic in these cases it is helpful to consider examples where morality might plausibly fail to give advice. Two examples widely discussed in the literature are cases of symmetry and cases of incommensurability.<sup>9</sup> In cases of symmetry an agent must choose between several bad options that are morally on a par. For example, in the novel “Sophie’s Choice” a mother with two infant twins is asked by a concentration camp guard to nominate one of her twins for execution (and threatened that both will be killed if she refuses to make a nomination). In so far as the mother’s two options are completely symmetrical (i.e., there are no moral reasons to favour one twin over the other, such as one having a better chance of survival) then it seems plausible that morality might fail to give advice in this case. By contrast, cases of incommensurability are cases where the available options contain competing values that are incommensurable and thus cannot be measured against each other in any meaningful way. For example, consider Sartre’s student who, during the Second World War, had to choose between caring for his elderly widowed mother and joining the French Résistance to fight the Nazis. In so far as the two values at stake here—caring for a parent in need, and defending one’s country against an evil aggressor—are incommensurable, it is plausible to think that morality might fail to give advice.

Most of the arguments for strong moral dilemmas focus on cases of symmetry or incommensurability. However, neither SYNCHRONIC nor DIACHRONIC are cases of this sort. They are not cases of symmetry because the options available have morally significant differences—namely, the difference of comparable promises being broken to *one* person or *two* people. They are not cases of incommensurability because, insofar as all the promises at stake are comparable, they are commensurable and can be weighed against each other. Finally, unlike the classic examples of symmetry and incommensurability where our intuitions may support the claim that morality gives us no advice, SYNCHRONIC and DIACHRONIC are cases where our intuitions strongly push for moral advice. For example, in SYNCHRONIC most have the intuition that the morally right thing for Sylvia to do is to minimize her promise-breaking, breaking a promise to one rather than two. These intuitions become even stronger when we consider that real world cases like SYNCHRONIC and DIACHRONIC generally have a third option available—the option of breaking

<sup>9</sup> For example, see Walter Sinnott-Armstrong, *Moral Dilemmas* (Oxford: Basil Blackwell, 1988).

all three promises. Whatever one thinks about the choice between the first and the second option, we can at least all agree that the agent must take one of these options over the third option of breaking all her promises. Yet (1) and (2) not only fail to give advice in the two-option version of the case, they also fail to give advice in the three-option version. Rule (1) classes the agent as doing the, all-things-considered, morally wrong thing whichever of the three options she takes, and thus does not advise her to at least take the first or second option over the third option. Rule (2) does not give any verdict in the three-option case and thus classes the agent as doing neither the morally right nor wrong thing, even when she decides to break all her promises. Any theory that falls short of commonsense morality in such a blatant way is implausible.

## 5 Attempted Solutions to the Moral Advice Problem

### 5.1 Supplementary Rules

A natural move to make in response to the moral advice problem is to supplement (1) or (2) with another rule that gives advice in SYNCHRONIC and DIACHRONIC. This could preserve whatever is attractive about adopting (1) or (2) while ensuring that agents receive appropriate moral advice.

Before looking at what supplementary rules might be appropriate, we need to clarify how supplementing might work. In the case of rule (2) supplementing is straightforward. Rule (2) gives no deontic verdict in SYNCHRONIC and DIACHRONIC, thus any rule giving an appropriate verdict in these cases can stand in as a supplementary rule. By contrast, supplementing rule (1) is more complicated. Rule (1) gives the deontic verdicts in SYNCHRONIC and DIACHRONIC that each of the available actions are, all-things-considered, morally wrong. Yet a supplementary rule advising agents on what to do in these cases must hold that one of the available actions is morally right.<sup>10</sup> Thus, (1) gives a deontic verdict that conflicts with the verdict of the supplementary rule in these cases. To avoid this conflict, and produce a set of rules that is uniquely action-guiding in SYNCHRONIC and DIACHRONIC, one of two routes must be taken. First, it could be stipulated that the supplementary rule has lexical priority over (1). Thus, in SYNCHRONIC and DIACHRONIC the verdict of the supplementary rule overrules the verdict of (1), and agents are given advice (via the supplementary rule) on which option to take. Second, the supplementary rule could be what deontic logicians call a *contrary-to-duty obligation*. A contrary-to-duty obligation is a conditional rule telling an agent what to do in circumstances where she will break her all-things-considered obligation. Applied to rule (1) this means that, in SYNCHRONIC and DIACHRONIC, (1) gives the agent an all-things-considered obligation to not perform any of her available options, while the supplementary rule gives the agent an all-things-considered *conditional* obligation to perform one of the available options. To many, such a rule

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<sup>10</sup> Or must otherwise advise agents on what to do. See §5.3 below.

will appear paradoxical, leading to the concern that contrary-to-duty obligations are incoherent. Indeed, there is an ongoing debate in deontic logic about whether contrary-to-duty obligations result in a deontic paradox.<sup>11</sup> I will have more to say on this later, but for now we will leave conditional obligations on the table as one possible way of supplementing.

Given these clarifications on how one might supplement (1) or (2) with an additional rule, we can now look at candidate supplementary rules. To find candidates we should first ask what advice the supplementary rule should give in cases like SYNCHRONIC and DIACHRONIC. An obvious answer is that morality should advise us to minimize our promise-breaking (either overall, or in the present-moment) in cases like SYNCHRONIC and DIACHRONIC. This answer is attractive because commonsense morality appears to hold that, all else being equal, doing the minimal amount of harm, or maximal amount of good, is the right thing to do. Furthermore, SYNCHRONIC appears to be a case where all else is equal, as the only thing at stake between the two options is whether Sylvia breaks a promise to one person or two. Other factors that might make a moral difference, such as using a person as a mere means, are not at stake in this case. Given these considerations, (3) and (4) are two obvious candidates for the supplementary rule. Each of these rules require an agent to minimize her promise-breaking (either overall, or in the present-moment) in cases like SYNCHRONIC and DIACHRONIC.

Putting all this together, there are six ways of supplementing to consider:

- (i) Adopt (1), supplement with (3), hold that (3) has lexical priority.
- (ii) Adopt (1), supplement with (3), hold that (3) is a contrary-to-duty obligation.
- (iii) Adopt (2), supplement with (3), (priority or conditionality not needed)
- (iv) Adopt (1), supplement with (4), hold that (4) has lexical priority.
- (v) Adopt (1), supplement with (4), hold that (4) is a contrary-to-duty obligation.
- (vi) Adopt (2), supplement with (4), (priority or conditionality not needed)

Adopting any of these six proposals would ensure that the non-maximizing rule provides moral advice in cases like SYNCHRONIC and DIACHRONIC. However, each proposal faces a version of the same challenge. It adopts either (3) or (4) as a supplementary rule, which leads to the question: *Why not accept the supplementary rule as the constraint in the first place?* For example, the first option involves accepting (1) and supplementing it with (3). However, why should we adopt this combination of (1) and (3) when we can just adopt (3) instead? There is a serious objection to each of the six proposed combinations behind this rhetorical question. To show this, I will consider each combination, comparing it to the alternative of accepting just the supplementary rule.

Let's start with the first combination, comparing it to accepting (3) outright. The crucial thing to notice here is that combining (1) with (the lexically prior) (3) gives the same deontic verdicts across all possible cases as (3) alone gives. This is because

<sup>11</sup> For a summary of this debate see Daniel Bonevac, "Against Conditional Obligation," *Nous*, vol. 32, no. 1 (1998): 37–53.

(3), being lexically prior, always overrules (1) when (1) and (3) give different verdicts.<sup>12</sup> It follows that we cannot adjudicate between (3) and the first combination by appeal to deontic verdicts, as each gives the same deontic verdicts across all cases. So how can we decide between these options? One weak reason for preferring (3) to the combination of (1) and (3) is its simplicity. Both options are equally plausible when it comes to deontic verdicts, yet the former is simpler, using one rule where the latter uses two. All else being equal, a simpler theory is preferable. However, there is a much stronger reason for preferring (3) to the combination of (1) and (3). The problem with the combination is not just that it is more complex than (3), but that it takes rule (3) and adds another rule to it without that rule doing any new work in the moral theory. Rule (1) would be redundant when added to (3) because there are no new deontic verdicts or moral explanations it provides that are not already offered by (3).

Now let's consider the third combination, comparing it to accepting (3) outright. This combination adopts (2) and supplements it with (3). However, just like the previous combination, combining (2) with (3) gives the same deontic verdicts across all cases as (3) alone gives. This is because (2) and (3) give the same verdicts in all cases except for those cases like SYNCHRONIC and DIACHRONIC where an agent lacks the ability to keep all her promises. In these cases, rule (2) gives no verdict (because its ability-clause is not satisfied) whereas (3) classes the action that minimizes total promise-breaking as morally right. Thus, the verdict of (3) takes precedence in these cases. This result gives us the same strong reasons we saw above to adopt (3) as opposed to (2) supplemented with (3). Adopting (3) is simpler, and combining (2) with (3) is redundant because (3) alone already gives all the deontic verdicts produced by their combination.

Consider next the second combination that adopts (1) and supplements it with (3), formulated as a contrary-to-duty obligation. When we compare this combination with adopting (3) alone we see that they both give the same rightness verdicts in all possible cases but different wrongness verdicts in certain cases. For example, suppose in SYNCHRONIC Sylvia keeps her promises to Asha and Beth but breaks her promise to César. According to the combination, Sylvia acts wrongly at the moment she breaks the promise to César because of rule (1). However, given that she cannot keep all her promises, the contrary-to-duty obligation applies and she acts rightly by minimizing her promise-breaking. According to (3), Sylvia acts rightly by minimizing her promise-breaking and does not act wrongly at the moment she breaks her promise. Thus, although the combination and rule (3) give the same rightness verdict in this circumstance, they give different wrongness verdicts. It follows that this combination can resist the redundancy argument that favoured (3) over the other combinations because (1) produces a verdict that cannot be produced by (3) alone, and thus is not redundant.

Nonetheless, there are two reasons to favour (3) over the combination of (1) supplemented with (3) as a contrary-to-duty-obligation. First, favouring (3) avoids the deontic paradoxes that arise from accepting a contrary-to-duty obligation. Insofar as

<sup>12</sup> Assuming, as is true, that there are no cases where (1) gives a deontic verdict and (3) does not.

these paradoxes are troubling and resistant to resolution, avoiding them is an important desideratum. Second, (3) appears to give a more plausible account of the timing of the agent's wrongdoing than the combination gives. As we saw in §3, rule (3) gives the verdict that, by minimizing her promise-breaking, Sylvia acts rightly at the moment her promises are due. What she is blameworthy for, and should feel guilty about, is the wrong acts she committed in the past that made it impossible for her to keep all of her promises. By contrast, the combination of (1) with (3) as a contrary-to-duty obligation locates Sylvia's wrongdoing in the present. It focuses on Sylvia failure in the present to keep all the promises due, rather than her past acts that made this inevitable. Locating Sylvia's wrongdoing in the past rather than the present appears much more plausible. It does a better job of capturing our intuitions about when Sylvia does the wrong the thing and what she might be blameworthy for.<sup>13</sup> So, summing up, both the reasons we have considered lead to the conclusions that (3) is a superior constraint to the combination of (1) and (3) as a contrary-to-duty obligation.

If the arguments given so far succeed then the first three combinations must be rejected because accepting (3) outright is more plausible than accepting each combination. The remaining three combinations mirror the first three, with the only difference being that (4) rather than (3) serves as the supplementary rule. Thus, the arguments I have employed against combinations (i), (ii), and (iii), work against combinations (iv), (v), and (vi). In each case, they show that accepting (4) outright is more plausible than accepting the combination. Therefore, we can conclude from this section that supplementing (1) or (2) with either (3) or (4) is not a viable solution the problem of moral advice.

## 5.2 The Numbers Don't Count

Above I argued that supplementing (1) and (2) with (3) or (4) is implausible. However, the supplementary rule strategy could still work if there is an alternative supplementary rule that is not (3) or (4) and yet gives suitable moral advice in cases like SYNCHRONIC and DIACHRONIC. I know of only two other (minimally plausible) supplementary rules that might be used here. Both of these rules come out of a strong anti-aggregation deontological view known as the "numbers don't count"

<sup>13</sup> One move that a defender of the combination might make here is to argue that, in addition to the basic rule (1), and the contrary-to-duty obligation (3), there is also a higher-order rule requiring agents to take all feasible steps necessary to ensure that they do not end up in circumstances in which they cannot avoid breaking a basic rule. This additional rule does not alter the verdict that the agent does the wrong thing at the moment she breaks a promise, even if she is acting to minimize her promise-breaking. However it does give the new verdict that she also did the wrong thing in the past when she acted in a way that made her promise-breaking inevitable. Thus, it allows the combination to avoid the implausibility of denying that the agent has done the wrong thing in the past by such acts. However, resolving the problem this way comes at the expense of creating a new problem. The agent acts wrongly twice, and can be blamed, and feel guilt for two different things. First, for performing an act that makes it inevitable that she will break a promise. And second for later breaking a promise. This double-counts her wrongdoing, subjecting her to two different instances of blame, guilt etc. for what is essentially just one mistake. A moral theory that double-counts wrongdoing in this way is implausible.

view.<sup>14</sup> According to this view, when we need to make a trade-off between different people involving comparable goods, and all is equal other than the numbers, it is wrong to decide what to do by favouring the greater number. For example, suppose that during a flood you find yourself able to rescue either one person or ten other people, and all else is equal (e.g. you have no personal connections to any victims, no one is more deserving, etc.) Commonsense morality says that we should favour the ten in this case as, all else being equal, ten saved and one drowned is morally preferable to the alternative. However, “numbers don’t count” deontologists object to this kind of aggregation. They argue that summing together the good of different lives is treating the people living those lives as mere receptacles of value, thereby disrespecting them. Instead of aggregating, they suggest one of two alternative decision procedures. First, you might give each person an *equal chance* of having her interests satisfied. In the rescue case you could do this by flipping a fair coin to decide whether to save the ten or the one, giving both the one and each of the ten a 1/2 chance of being saved. Second, you might give each person a *proportional chance* of having her interests met. In the rescue case you could do this by holding a weighted lottery, giving the one a 1/11 chance of rescue and the ten a 10/11 chance of rescue.<sup>15</sup> Each of these decision procedures can be applied to promise-breaking examples, producing rules that advise us on what to do in cases like SYNCHRONIC and DIACHRONIC:

(5) Each agent must give all her promisees an *equal chance* of having their promises honoured whenever it is not possible for her to keep all her promises.

(6) Each agent must give all her promisees a *proportional chance* of having their promises honoured whenever it is not possible for her to keep all her promises.

Either of these rules could be used to supplement (1) or (2). Alternatively, rule (5) (but not rule 6) can be reformulated so that it is not a supplementary rule but is instead an interpretation of the general constraint on promise-breaking:

(5\*) Each agent must give all her promisees the greatest possible chance of not having their promises broken, consistent with every promisee having an equal chance of not having their promises broken.

Rule (5\*) is an alternative to (1)–(4) that could be used to produce a constraint on promise-breaking. It gives the verdict in TAXI that Sylvia must not break her promise even though it will prevent more promise-breaking by others. However, it is distinct from rules (1), (2), (3), and (4) because it gives different deontic verdicts from these rules in SYNCHRONIC and DIACHRONIC. In these cases it requires Sylvia to decide between her options by an “equal chance” decision procedure such as flipping a fair coin.

<sup>14</sup> For a classic presentation of this view see: John Taurek, “Should the Numbers Count?” *Philosophy & Public Affairs*, vol. 6, no. 4 (1977): 293–316.

<sup>15</sup> For the first decision procedure see: Taurek, op. cit. For the second, see: Jens Timmermann, “The Individualist Lottery,” *Analysis*, vol. 64, no. 2 (2004): 106–112.

Anyone willing to adopt (5\*) as a constraint on promise-breaking, or willing to supplement rules (1) or (2) with (5) or (6) has thereby solved the moral advice problem. They have a non-maximizing interpretation of the constraint on promise-breaking and yet are able to offer advice in cases like SYNCHRONIC and DIACHRONIC. However, this solution comes at a serious cost. The “numbers don’t count” view conflicts with deeply ingrained intuitions of commonsense morality—intuitions telling us that, when all else is equal, we should aggregate and favour the greater number. Many moral philosophers, even those sympathetic to a deontological approach to constraints, reject the “numbers don’t count” view because of its counterintuitiveness.<sup>16</sup> Furthermore, we have already noted that the key motivation for including deontic constraints in a moral theory is their commonsensical intuitiveness. Given this, it is odd to interpret them in a way that conflicts with core commitments of commonsense morality. On these grounds, I reject (5), (5\*), and (6) as potential solutions to the moral advice problem.

### 5.3 Moral Rightness and Moral Reasons

A final suggestion for how to resolve the moral advice problem can be found in recent work by Christa Johnson.<sup>17</sup> Johnson favours interpreting deontic constraints as (1), and regards cases like SYNCHRONIC as strong moral dilemmas. However, Johnson agrees that the agent in SYNCHRONIC ought to take the option of breaking one promise over the option of breaking two promises. To ensure that agents are given this advice, Johnson suggests severing the connection between “moral rightness” and “all things considered moral reasons”. We normally suppose that if a certain option is favoured by the balance of moral reasons, and is the act that the agent ought to perform, then that act is the morally right act to perform. However, Johnson rejects this. She argues that in cases like SYNCHRONIC we ought to hold that all of the agent’s available options involve morally wrong actions and yet accept that the agent ought to choose the option of breaking one promise because that is the available option supported by the balance of moral reasons.

Johnson acknowledges that adopting such a stance is counterintuitive. She also acknowledges that it raises questions about the purpose of the concepts of “moral rightness” and “moral wrongness”. If these concepts are not directly connected to the question of what we ought to do, then what purpose do they serve? In response Johnson gives two reasons in support of her approach. First, she argues that if we

<sup>16</sup> For deontologists rejecting the view see: Gregory S. Kavka, “The Numbers Should Count,” *Philosophical Studies*, vol. 36, no. 3 (1979): 285–294; T.M. Scanlon, *What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 1998); Rahul Kumar, “Contractualism on Saving the Many,” *Analysis*, vol. 61, no. 2 (2001): 165–170; Iwao Hirose, “Saving the Greater Number without Combining Claims,” *Analysis*, vol. 61, no. 4 (2001): 341–342; Joseph Raz, “Numbers with and without Contractualism,” *Ratio*, vol. 16, no. 4 (2003): 346–367; Nien-hê Hsieh, Alan Strudler, David Wasserman, “The Numbers Problem,” *Philosophy & Public Affairs*, vol. 34, no. 4 (2006): 352–372; Kamm, op. cit.; and Tom Dougherty, “Rational Numbers,” *The Philosophical Quarterly*, vol. 63, no. 252 (2013): 413–427.

<sup>17</sup> Christa M. Johnson, “The Intrapersonal Paradox of Deontology,” *Journal of Moral Philosophy*, vol. 16, no. 3 (2019): 279–301.



accept deontic constraints then we ought to connect acting wrongly to acting in a way that violates a deontic constraint. However, she argues that in cases like SYNCHRONIC the balance of moral reasons requires one to violate a constraint, and thus connecting wrongness to violating constraints severs it from failing to act on the balance of moral reasons. Second, she argues that moral rightness and wrongness serve the important purpose of tracking the appropriateness of reactive attitudes like moral guilt. The balance of moral reasons may require the agent to break the promise to the one. However, Johnson argues that the agent nonetheless ought to feel guilt when she breaks this promise as she is wronging the promisee. Classifying her act as “wrong” despite the fact that it is supported by moral reasons usefully marks the appropriateness of guilt in such circumstances.

Both arguments face difficulties. The problem with the first argument is that a constraint can be interpreted along the lines of (3) or (4). When it is interpreted this way then, in cases like SYNCHRONIC, we can maintain the connection between all things considered reasons and moral rightness without rejecting the idea that violating the constraint is morally wrong. This is because the violation of the constraint is not located at the moment the promise is broken.

The problem with the second argument is that guilt does not always seem appropriate at the time the promise is broken. Recall the discussion in §3 where we considered the possibility that the agent’s wrong act, for which she ought to feel guilt, was some earlier act of failing to do what she had to do to ensure that she would keep all her promises. To counter the argument that there is always some residual guilt that is appropriate at the time of the actual promise breaking we considered the following example:

Suppose, I confess to you that I will soon break a promise to you because I failed to do what was necessary to ensure that I keep it. You blame me for this failure, I acknowledge guilt, express contrition, and offer restitution. You then forgive me and we both agree that the matter is resolved. When at a later time I actually break the promise in question it doesn’t seem appropriate for there to be additional blame or guilt beyond what was already acknowledged.

This example demonstrates that there is no need to posit additional guilt at the time the promise is broken that is separate from the guilt that is connected to the agent’s wrong act of failing to do what she needed to do to ensure that she keeps her promises.

Given that Johnson’s solution incurs the significant counterintuitive cost of severing the link between “moral rightness” and “all things considered moral reasons”, and given that the arguments she offers in favour of this appear unconvincing, I conclude that it is not a viable solution to the moral advice problem.

## 6 Implications of the Thesis

Above I have argued that if there are deontic constraints then they are best interpreted as maximizing rules like (3) and (4). This thesis has some important implications for the debate between deontologists and agent-relative consequentialists. Both



sides in this debate include deontic constraints in their moral theories yet differ by whether they offer a consequentialist or non-consequentialist explanation of those constraints. Deontologists have typically interpreted deontic constraints along the lines of (1), (2), or (5\*), whereas agent-relative consequentialists have interpreted them as either (3) or (4).<sup>18</sup> Furthermore, deontologists who have considered the possibility of interpreting constraints as either (3) or (4) have dismissed this possibility as “gimmicky” and incompatible with the core commitments of deontology.<sup>19</sup> This suggests that the thesis defended here actually supports agent-relative consequentialism in this debate. Insofar as independent reasons suggest that deontic constraints are better interpreted as (3) or (4), consequentialist accounts of those constraints appear to be favoured over deontological accounts.

However, this argument is a little too fast. Although it is generally true that deontologists have favoured interpretations like (1), (2), and (5\*), and consequentialists have favoured interpretations like (3) and (4), it appears logically possible to endorse (3) or (4) without being a consequentialist. For a consequentialist approach to constraints, as it is typically understood, does not only hold that constraints are best explained as maximizing-rules, but also offers an axiology in which the quantity maximized by these rules has moral value. Furthermore, the consequentialist explains the duty to maximize the relevant quantity in terms of its value. Thus, an agent-relative consequentialist account of the constraint on promise-breaking must hold that, for each agent, that she does not break promises is good-relative-to her, and further, must use this axiological claim to explain why each agent has a duty to minimize her own promise-breaking.

If one endorsed (3) or (4) yet denied at least one of these additional claims then one would fall short of offering a consequentialist account of constraints. For example, suppose that you interpreted constraints as (3) but denied that not breaking promises has agent-relative value for each agent. By denying that the quantity being maximized has value, you would be rejecting consequentialism. Thus, it is possible to interpret constraints as (3) or (4) and yet endorse some kind of non-consequentialist account of constraints.

Even though this appears possible it might not be very plausible. An agent-relative consequentialist might argue that it is implausible to hold that morality requires agents to maximize some quantity yet deny that that quantity has moral value. If morality requires us to bring about as much of something as we can, then surely the thing we are bringing about has moral value. Indeed, it seems that the best

<sup>18</sup> Examples on the deontologist side include: Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974); Scanlon, op. cit.; Kamm, op. cit.; Michael Otsuka, “Are Deontological Constraints Irrational?” in Ralf Bader, John Meadowcroft (eds) *The Cambridge Companion to Nozick’s Anarchy, State, and Utopia* (Cambridge: Cambridge University Press, 2011); and Johnson, op. cit. Examples on the consequentialist side include Amartya Sen, “Rights and Agency,” *Philosophy and Public Affairs*, vol. 11, no. 1 (1982): 3–39; James Dreier, “The Structure of Normative Theories,” *The Monist*, vol. 76, no. 1 (1993): 22–40.; Michael Smith, “Neutral and Relative Value after Moore,” *Ethics*, vol. 113, no. 3 (2003): 576–98; Jennie Louise, “Relativity of Value and the Consequentialist Umbrella,” *Philosophical Quarterly*, vol. 54, no. 217 (2004): 518–536; and Portmore, op. cit.

<sup>19</sup> For the former see Nozick, op. cit., p.29. For the latter see Otsuka, op. cit., pp. 41–50.

explanation of a maximizing-rule is a value explanation that appeals to the value of the thing maximized. For maximization appears to be the fitting response to the discovery that something possesses moral value, and thus we expect to find maximizing-rules only when there is something of value that it is fitting to maximize.

However, a non-consequentialist might counter this by arguing that there are independent reasons for rejecting the axiology appealed to by the agent-relative consequentialist. For example, she may appeal to general skepticism about the notion of agent-relative value as grounds for denying that the quantities maximized by (3) and (4) have value.<sup>20</sup> Thus, at this point we may conclude that the debate ends in a stalemate.

There is one final argument that might swing things in favour of agent-relative consequentialism. Douglas Portmore has argued that the most basic and important idea of consequentialism is the *teleological theory of reasons*, which says that all moral reasons are reasons to bring about certain states of affairs.<sup>21</sup> According to Portmore, if all moral reasons are teleological then consequentialism is true because what we ought to do is based on a ranking (implicit in our reasons) of all the outcomes that we might bring about. Whether this ranking of outcomes orders them in terms of their moral goodness or merely in terms of the strength of the reason to bring them about is, in Portmore's view, beside the point. Thus, Portmore rejects the traditional idea that consequentialism is necessarily concerned with bringing about the outcomes which are best. Portmore argues that as long as a moral theory is concerned solely with bringing about certain outcomes according to some ranking, it deserves to be called "consequentialist".

Portmore's view is controversial. However, if we accept it then it follows that interpreting constraints as (3) or (4) is adopting a consequentialist account of constraints. For interpreting constraints in this way is taking them to be grounded in teleological reasons—reasons to bring about certain states of affairs. By contrast, deontologists have traditionally classified constraints as grounded in non-teleological reasons and seen this as an important feature distinguishing their view from consequentialism.<sup>22</sup>

In summary, the thesis defended here appears to offer some support for an agent-relative consequentialist account of deontic constraints over alternative non-consequentialist accounts. If we accept Portmore's account of the consequentialism/non-consequentialism distinction, then this support is direct entailment. The thesis defended in this article entails that a consequentialist account is the correct one. If we instead prefer a more traditional account of what consequentialism is, then it is possible to accept this article's thesis and yet maintain a non-consequentialist account of constraints. However, doing so does not fit well with a traditional account of non-consequentialism and requires various commitments that many non-consequentialists may not want to accept. Therefore, even if there is no direct entailment, there at least appears to be a

<sup>20</sup> For an influential account of this skepticism, see: Mark Schroeder, "Teleology, Agent-Relative Value, and 'Good'," *Ethics*, vol. 116, no. 2 (2007): 265–295.

<sup>21</sup> Portmore, *op. cit.*, pp. 34–38.

<sup>22</sup> For example, see Paul Hurley, "Comments on Douglas Portmore's Commonsense Consequentialism," *Philosophy and Phenomenological Research*, vol. 88, no. 1 (2014): 225–232.

presumptive case from the argument that constraints are best interpreted as maximizing rules to the conclusion that a consequentialist account of constraints is more plausible.

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