

Pro Tanto Rights and the Duty to Save the Greater Number

Benjamin Kiesewetter

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Abstract: This chapter has two aims. The first is to present and defend a new argument for rights contributionism – the view that the notion of a moral claim-right is a contributory (or *pro tanto*) rather than overall normative notion. The argument is an inference to the best explanation: it is argued that (i) there are contributory moral factors that contrast with standard moral reasons by way of having a number of formal properties that are characteristic of rights, even though they can be overridden, and (ii) that this is best explained by a view that takes these factors to correlate with rights. The second aim is to show that the truth of rights contributionism matters for normative ethics. More specifically, it is argued that rights contributionism clears the way for deontologists to justify the pre-theoretically plausible verdict that we have a duty to save the greater number in so-called Taurek scenarios – scenarios in which we have to choose between saving either a greater or a smaller number of different people. The chapter offers a novel and distinctively deontological explanation of this verdict that is based on the assumption that everyone has a *pro tanto* right to be saved in a Taurek scenario.

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The distinction between *contributory* and *overall* normative concepts is an important reference point in contemporary moral theory. Overall concepts include ‘ought’, ‘wrong’, ‘required’, ‘prohibited’, and ‘permitted’, while the paradigm contributory concept is the concept of a ‘reason’

– the notion of a factor that supports an action only to some extent (*pro tanto*), and stands in competition with other contributory factors. A natural way to illustrate the distinction appeals to the inputs and outputs of practical deliberation: overall concepts can be used in a verdict that concludes practical deliberation, while judgements employing only contributory concepts can merely serve to express premises of such deliberation.¹

How does the notion of a *moral claim-right* relate to this distinction? According to what I will call *rights contributionism*, rights are competing factors that can be overridden. Judith Jarvis Thomson advocates this view when she argues that one can infringe a right without violating it, where ‘violation’ refers to the impermissible infringement of a right.² In contrast, according to *rights absolutism*, moral rights correlate with overall moral obligations, which cannot permissibly be breached. This view is often ascribed to Robert Nozick’s view of rights as “side constraints”, and it has been explicitly defended by Russ Shafer-Landau and, more recently, Jay Wallace.³ To illustrate these two views, consider the following example by Joel Feinberg:

Suppose that you are on a backpacking trip in the high mountain country when an unanticipated blizzard strikes the area with such ferocity that your life is imperiled. Fortunately, you stumble onto an unoccupied cabin, locked and boarded up for the winter, clearly somebody else’s private property. You smash in a window, enter, and huddle in a corner for three days until the storm abates.⁴

Rights contributionists, like Thomson and Feinberg, hold that the backpacker infringes the cabin owner’s property rights, but does so permissibly. By contrast, rights absolutists must either hold that the backpacker acts wrongly, or that she does not infringe a moral right by breaking into the cabin. Insofar as they want to allow for the plausible verdict that the backpacker acts permissibly, rights absolutists have to deny that the cabin owner has a right against the unauthorized use of his property under the circumstances depicted by the example. On a specificationist construal of this

¹ As I use the term ‘overall’ in this paper, an overall concept need not be domain-independent (like the all-things-considered ought), but may instead be domain-relative (like the moral or the prudential ought). Consequently, an overall judgement might conclude moral deliberation without thereby concluding other kinds of deliberation.

² Thomson (1976, 40). See also Feinberg (1978) and Thomson (1990 Chs. 3–6). The notion of a *pro tanto* right differs from the epistemic notion of a *prima facie* right (cf. Montague 1988, 360); it refers to a full-fledged right rather than an indicator of such a right.

³ See Nozick (1974, Ch. 3), Shafer-Landau (1995), Wallace (2019, esp. 170-76). Note that I do not assert that Nozick really held this view; there are reasons to doubt that he did.

⁴ Feinberg (1978, 102). See also Thomson (1976, 40) for an example of the same structure.

view, the scope of the right against the unauthorized use of property has to be specified by way of an exceptional clause that excludes the circumstances of the example (as well as other circumstances that permit the unauthorized use of property). On a particularist construal, truths about rights are always relative to particular circumstances, and relative to the circumstances depicted by the example, the cabin owner has no right against the unauthorized use (and the same is true for other circumstances that permit the unauthorized use of property).⁵

This chapter has two aims. In the first part (§§1–4), I argue that the notion of a moral right is to be understood as a contributory rather than an overall normative notion. Rights are competing factors that can conflict and have to be weighed against each other; they do not entail by themselves that an action is impermissible. The argument is an inference to the best explanation. I argue that (i) there are contributory moral factors that contrast with standard moral reasons by way of having a number of formal properties that are characteristic of rights, even though they can be overridden, and (ii) that this is best explained by a view that takes these factors to correlate with rights. In the second part of the chapter (§§5–6), I aim to show that the truth of rights contributionism matters for normative ethics. More specifically, I argue that rights contributionism clears the way for deontologists to justify the pre-theoretically plausible verdict that we ought to save the greater number in so-called Taurek scenarios – scenarios in which we have to choose between saving either a greater or a smaller number of different people. I offer a novel and distinctively deontological explanation of this verdict that is based on the assumption that everyone has a *pro tanto* right to be saved in a Taurek scenario.

Before getting started, a word of clarification on the relation between rights, duties, wrongness, and wronging will be useful. Following Hohfeld’s seminal analysis of legal concepts (Hohfeld 1913), moral philosophers widely agree that claim-rights correlate with so-called directed duties – duties or obligations that are held specifically towards the claimholder. In line with this, I will assume that rights contributionism entails contributionism about directed duties. However, it is worth noting that rights contributionists can accept that the terms ‘duty’ and ‘obligation’ can *also* be used, in another sense, to refer to the notion of an overall moral requirement, which has to be distinguished from the notion of a directed duty.⁶ Thus, in response to the putative platitude that

⁵ See Shafer-Landau (1995, 213), who adopts a specificationist approach. Shafer-Landau (1995, 214) claims that only rights absolutism is compatible with particularism, but it is difficult to see why this should be so. In my view, the distinction between contributionism and absolutism is orthogonal to the distinction between particularism and generalism.

⁶ This follows already from the plausible assumption that not all moral requirements are directed. But even if we agree with Wallace (2019) in rejecting this assumption, contributionists might hold that the term ‘duty’ is ambiguous between a contributory and an overall notion.

a breach of duty is morally impermissible,⁷ rights contributionists can (and should, in my view) hold that the assumption is a platitude only if ‘duty’ refers to an overall moral requirement but not if it refers to the notion of a directed obligation. Moreover, since rights contributionists believe that rights infringements can be permissible, they must reject either the assumption that rights infringements necessarily *wrong* claimholders, or the assumption that wronging entails wrongdoing. However, they can maintain that rights infringements wrong claimholders, or that wronging is wrong, whenever the right that is being infringed is undefeated.

1. *Directed deontic structure*

Some moral reasons have distinctive features that are characteristic of a right/duty-nexus. When a reason has these features, I will say that it has *directed deontic structure*.⁸ The basic point of the first part of this chapter is that directed deontic structure is located on the contributory level, i.e., it obtains regardless of whether the reason in question is defeated and thus regardless of whether or not the action in question is morally required or permitted. In this section, I start by describing the structure in question using the example of a promissory reason. I then argue that this structure is common for some but not all moral reasons and that it is characteristic of rights (§2). Subsequently, I argue that reasons have directed deontic structure regardless of whether or not they defeat competing reasons or are defeated by them (§3), and propose an abductive argument for rights contributionism based on the assumptions argued for (§4).

Suppose that Alan promises Belma to help her move, thereby coming to have a moral reason to do so. This reason has a number of interesting features. To begin with, it is a *directed reason*, which is to say that it is a reason conformity to which is *owed to another person*, namely Belma.⁹ As is known from discussions of the problem of third-party beneficiaries, this aspect of directedness cannot simply be identified with the fact that the action supported by the reason benefits Belma.¹⁰ Belma may be the beneficiary of an action that Alan has reason to perform without its being the

⁷ Montague (1988, 348) and Shafer-Landau (1995, 209–10) both argue against rights contributionism on the basis of this assumption.

⁸ This terminology is inspired by Wallace’s term ‘deontic structure’ (Wallace 2013). But while there is significant overlap between Wallace’s notion of deontic structure and my notion of directed deontic structure, they are not equivalent. For one, directedness is not (as far as I understand it) part of Wallace’s notion of deontic structure, but rather part of its explanation. For another, what Wallace calls “lack of discretion to ignore” seems to be central for his notion, while one can consistently hold that lack of discretion to ignore is not a distinctive feature of directed deontic structure in my sense.

⁹ For present purposes, a directed reason may be understood as the reason that is constitutively related to a directed duty, but see §3 for a characterization that does not appeal to the notion of a directed duty.

¹⁰ See esp. Hart (1955, 180–81).

case that conformity is owed to her, and Alan may owe a person conformity with a reason in support of an action that does not benefit her. For example, if Alan promises Carlos to help Belma move, conformity with this reason may benefit Belma, but is not owed to Belma, and it may not benefit Carlos, but is still owed to him.

A second point, which is closely related to directedness, is that failure to conform with a promissory reason calls for amendments or *moral repair*. If Alan breaks his promise, this fact gives him reason to apologize to Belma and to offer her compensation for costs that she might have incurred or for the missed opportunity, for example by offering her to help her on another day. There are of course circumstances that justify the breaking of a promise (a possibility that I will discuss in more detail in §3), and insofar as we take an apology to involve the admission of a wrongdoing, it seems too strong to say that promise-breakers have reason to apologize in such cases. But even when there was no morally preferable solution in the situation, promise-breakers have reason to regret that they did not do what they owed to the promisee; they have reason to express these regrets by saying sorry (if this is possible); and they have a special responsibility to help to alleviate the harm that their promise-breaking might have caused for the promisee (if there is one). Notably, the kind of regret that is called for in such cases is essentially first-personal and relational; it is not merely an attitude towards a regrettable state of affairs that anyone could hold, but a *de se* attitude about the agent's own failure to do what he or she owed to another person. I will call this *relational agent-regret*.¹¹

A third feature of Alan's reason worth highlighting is its *peremptoriness*, by which I mean the conditional property that a reason has when it makes the action morally required in the absence of sufficient competing reasons. Since Alan is morally required to conform with his promissory reason unless there is a countervailing reason with sufficient strength, this reason is peremptory.

Fourthly, Alan's reason is *pre-emptive*, by which I mean that it is capable of defeating certain competing reasons in a special, pre-emptive way. What exactly pre-emptive defeat amounts to is a contentious issue, but I hope that the following three points provide at least a rough idea without generating too much controversy. The first point is that pre-emptive defeat contrasts with (at least typical forms of) both outweighing and undermining defeat. That is, a pre-emptive reason wins the

¹¹ Williams famously discusses agent-regret in the context of moral luck cases, in which it involves "the wish, all things taken together, that one had acted otherwise", whereas the regret appropriate in cases of justified non-conformity with a directed reason merely involves "a wish that things had been otherwise" (cf. Williams 1976, 31). But Williams is explicit that only the latter and not the former kind of wish is necessary for agent-regret, precisely because he thinks that there are "cases of conflict . . . , where either course of action, even if it is judged to be for the best, leaves . . . agent-regrets" (1976, 31).

competition against pre-empted reasons not simply because it is stronger (as any ordinary reason could in principle be stronger than a competing reason), nor does it figure as an undercutting defeater (or ‘disabler’ or ‘cancelling condition’) that undermines their status as reasons. A natural metaphor to use in this context is that of a trump in a card game, which overrides other cards independently of their count value. Hence, pre-emptive reasons can be said to override pre-empted reasons by trumping them rather than outweighing (or undermining) them.

The second point (which is really just the other side of the same coin) is that pre-emptiveness entails a certain kind of protection, namely protection from being outweighed by pre-empted reasons. If one reason pre-empts another, then adding another reason of the same kind and strength as the pre-empted reason will not make a difference to the overall verdict of the case: whatever trumps the first reason will also trump the second one. This is crucially different from standard outweighing defeat. If one reason outweighs another, then adding another reason of the same kind and strength as the outweighed reason often tips the balance against the first reason and makes all the difference for the overall verdict.

The third point is that pre-emptive reasons seem to provide a vindicating explanation of the phenomenon of *deliberative bracketing*. As several authors have remarked, it can be appropriate and characteristic of moral conscientiousness to give certain moral reasons a special treatment in deliberation, which involves disregarding certain kinds of competing reasons or excluding them from the process of weighing reasons.¹² This is naturally explained in terms of pre-emptive defeat: if one reason defeats another by trumping rather than outweighing it, then the second reason need not be weighed against the first, and it can appear inappropriate to give it serious consideration in deliberation.

It is natural to ask what the deeper mechanism behind pre-emptive defeat is. According to Raz’s influential account, pre-emptive reasons defeat competing reasons because they are combinations of first-order reasons and second-order “exclusionary reasons” against *acting for* certain competing first-order reasons, and an exclusionary reason against acting for a reason defeats this reason in a way that does not amount to outweighing or undermining it. However, both the claim that there are reasons against acting on other reasons, as well as the claim that such reasons are capable of defeating the first-order reasons, can and have been questioned, and neither of these

¹² See e.g. McDowell (1980, 17). Raz’s notion of an ‘exclusionary reason’ (see esp. Raz 1990, 35–48 and 178–99) is naturally associated with this phenomenon as well. Strictly speaking, however, Razian exclusionary reasons only count against *acting on* certain first-order reasons, not necessarily against including them in deliberation.

claims is entailed by the idea of pre-emptive defeat itself.¹³ So there is no need to presuppose them here. The notion of a pre-emptive reason I will work with is the notion of a first-order reason that defeats certain competing reasons in a special ‘trump-like’ way (distinct from standard forms of outweighing and undermining), which entails that the reason is generally protected from being outweighed by reasons of this kind and makes deliberative bracketing appropriate.

Back to Alan. If Alan is morally conscientious, he will not treat certain reasons that conflict with his promise as serious contenders, including, for example, reasons to engage in certain valuable activities, or standard welfarist reasons to promote his own or somebody else’s well-being. For example, if Alan is asked whether he would like to attend a theatre performance, but he cannot do this without breaking his promise, he will not take the reason to do this as a respectable competitor that has to be weighed against his promissory reason. This does not change if he learns that the performance is to be followed by another one that is equally attractive. This suggests that his promissory reason is pre-emptive; it defeats certain competing reasons in a special ‘trump-like’ way and is in turn protected from being outweighed by reasons of this kind.

A fifth feature of Alan’s reason is its *waivability*, by which I mean the property that a reason has when someone has the power to cancel the reason by declaration. Promissory reasons are a paradigmatic example of waivable reasons, as promisees generally have the power to cancel promissory reasons by releasing promisers from their promises. For example, if Belma consents to Alan’s going to the theatre performance rather than helping her, she thereby releases Alan from his promise and makes it the case that Alan’s promise is no longer a (promissory) reason to help her.

Finally, promissory reasons are *voluntary*; they exist as a result of a voluntary, communicative act of commitment. By promising Belma to help her, Alan communicates an intention to undertake a commitment to help her, and it is a result of this voluntary act that he comes to have a new reason to do so.

To sum up, promissory reasons are (i) directed, (ii) essentially related to moral repair, (iii) preemptory, (iv) pre-emptive, (v) waivable, and (vi) voluntary. These features do not co-occur contingently, but they are part of a common structure that is shared by a distinct class of moral reasons, which I call *directed deontic structure*. I take (i)-(iv) to be individually necessary and jointly sufficient for this structure. Features (v) and (vi) are arguably not necessary, but there is reason to think that they are sufficient, and they in any case indicate directed deontic structure.

¹³ Recent criticisms of Razian exclusionary reasons include Whiting (2017) and Adams (2021).

2. A distinctive structure characteristic of rights

In this section, I will first illustrate my claim that directed deontic structure is a distinctive property of a certain class of moral reasons and then argue that it is characteristic of rights. With regard to the first point, consider the moral reason to refrain from unauthorized use of somebody else's property. This reason seems both pre-emptive and peremptory: it is protected from being defeated by standard welfarist reasons or reasons to engage in valuable activities and it makes acts impermissible in the absence of sufficient countervailing reasons. Moreover, conformity with it is owed to the property owner and non-conformity calls for repair (i.e. for apology, compensation, or at least the expression of relational agent-regret). It is also waivable, and at least typically generated by a voluntary act of acquiring ownership. So reasons to respect other people's property have directed deontic structure. Next, consider the reason to refrain from harming others. This reason is not voluntary and perhaps not fully waivable, but it is peremptory, pre-emptive, directed and repair-related, and so has directed deontic structure in the sense defined above.

Similar points could be made about reasons against deceiving people, reasons for repaying one's debts, or reasons to respect another person's bodily integrity. Yet not all moral reasons have directed deontic structure – there is at least one important class of moral reasons that lack this structure. This class may be called the class of standard altruistic reasons – reasons that are provided by the fact that an action (or omission) would make some other person happy, or benefit her, do her a favor, etc. To illustrate, consider a case in which Belma's neighbor Daria has a standard altruistic reason to help Belma move. She sees that Belma could need a hand, and that helping her would reduce her stress, but she hasn't committed herself to helping, nor is this a case of emergency, in which her help is necessary or sufficient for preventing a great harm. That helping her would reduce Belma's stress is, I take it, a reason to do this, and unless we presuppose a particularly restrictive, theoretically laden notion of morality, it seems to count as a moral reason. Yet this reason lacks every single feature that I have highlighted as characteristics of promissory reasons and other reasons with directed deontic structure. It is not directed, as conformity with it is not owed to another person (recall that directedness is not to be confused with being related to someone else's welfare). It is also not repair-related, as failure to conform with this reason does not give rise to reasons to apologize or compensate. Neither is it peremptory, for even if Daria lacks sufficient competing reasons, it still seems morally permissible for her to refrain from helping Belma. To be sure, it will then be morally better to help her, but this is plausibly a case of supererogation rather than a case of a moral requirement. Daria's reason to help Belma also lacks pre-emptive force. Moral

conscientiousness is fully consistent with weighing this reason against other welfarist reasons (including self-interested ones) or reasons to engage in valuable activities such as a theatre performance, and it is not protected from being outweighed by such reasons. Daria's reason is also not waivable. While it may be possible for Belma to act in ways that make the reason disappear (by changing the fact that Daria's help would reduce her stress), this must be distinguished from the power to cancel a reason by declaration – a power that Belma lacks in this case. Finally, it is clear that Daria's reason is not voluntary, as it isn't generated by an intentional action.

In sum, directed deontic structure is a property of a distinct subclass of moral reasons. I will next argue that this structure is characteristic of rights. I hold that (i)–(iv) are essential (and thus necessary) features of all moral claim-rights, while (v) and (vi) are essential features of at least some rights. As I mentioned in the beginning of this chapter already, claim-rights correlate with so-called directed duties – duties owed to the claim holder. It follows from this that all moral claim-rights are directed and preemptory: conformity with a moral claim-right is always owed and since infringing a right involves a breach of duty, doing so cannot be morally permissible in the absence of sufficient reasons. It also seems clear that all such rights are pre-emptive. Rights are often described as trumps.¹⁴ And while this idea can be understood in ways that are arguably too strong or restrictive, the interpretation according to which rights are capable of defeating certain other considerations in a pre-emptive fashion is not. In fact, it is difficult to see how the notion of a moral right could have a point unless one assumes that rights involve a special protected status, which is not vulnerable to all the standard forms of defeat.

Further, it seems plausible to think that all moral rights are related to moral repair in the sense that right infringements call for apology or the expression of relational agent-regret, and in case it goes along with harms, also for compensation. Will theorists of rights hold that waivability is the core element of all rights. But even those who think that there are unwaivable or unalienable rights can and should accept that waivability is an essential feature of many rights. Finally, while clearly not all rights are the result of voluntary decisions, it seems essential for a certain class of rights that they can be granted in voluntary transactions, such as contracts.

3. Defeat

Directed deontic structure, I will now argue, is located on the contributory level: reasons have this structure regardless of whether or not they defeat all competing reasons or are defeated by

¹⁴ See esp. Dworkin (1984).

competing reasons themselves. To substantiate this claim, let me modify the original example of Alan and Belma, supposing that Alan's child falls ill and has to be taken care of at home, which provides Alan with a conclusive reason to break his promise to help Belma (assume, for the sake of simplicity, that he is unable to reach her and ask to be released from his promise).

Evidently, this does not change the fact that Alan has a *pro tanto* reason to keep his promise, that there is still something to be said in favor of doing so. That a reason is defeated by a competing reason does not mean that it is cancelled. Moreover, this reason still seems directed towards Belma. Directedness is not the kind of property that a reason loses by being defeated. It may be argued that keeping a promise cannot truly be *owed* if there is stronger reason to break it. But it is difficult to see why this should be so. Surely, I can owe you money even if I have stronger reason to feed my hungry child than give it back to you. If I can owe you money under such circumstances, why couldn't I owe you the act I promised even when I have stronger reason to refrain?

More importantly, if we cannot owe conformity to defeated reasons, this would only mean that the property of directedness has to be distinguished from the property of being a reason with which we can owe conformity. For example, there is a clear sense in which a reason is directed to S if S can cancel the reason by declaration (i.e. if the reason is waivable).¹⁵ This property does not depend on whether or not it is outweighed: if Belma hears about Alan's sick child, she can release him from the promise, thereby cancelling a reason that was overridden but still had normative weight. Since overridden reasons can be waivable, and waivability entails directedness, overridden reasons can be directed as well.

This is further supported by the fact that failure to conform with an overridden promissory reason still calls for repair. It seems very natural for Alan to not only explain himself to Belma, but to express relational agent-regret that he broke his promise. It also seems that Alan owes Belma something like compensation.¹⁶ For example, should Belma ask him to promise to help her on another day, it seems plausible to think that the fact that he failed to keep his earlier promise gives Alan an additional reason to offer her another promise – perhaps even a peremptory one. And if

¹⁵ Another plausibly sufficient condition is that an interest of S grounds a pre-emptive reason. Moreover, it seems to me plausible to think that a reason is directed if, and only if, at least one of these conditions hold.

¹⁶ This point about compensation is already highlighted by Feinberg (1978) and Thomson (1980) in support of rights contributionism. Both of them seem to presuppose, however, that rights are needed to *explain why* compensation is owed, which can be questioned (cf. Shafer-Landau 1995, 216–17). By contrast, the argument of this chapter does not presuppose that rights are explanatorily prior to reasons for compensation. The view that non-conformity with defeated reasons could give rise to reasons for compensation is also sometimes denied (e.g. Montague 1984). I don't think that the overall case for contributionism presented in this paper hinges essentially on this claim; readers unwilling to accept it are invited to bracket this feature and focus on the others.

Belma incurred expenses because of the broken promise, this seems to give Alan agent-relative reasons to assume these costs or contribute to them, even though he did nothing wrong.

Alan's reason also remains pre-emptive, which is revealed by two considerations. First, a very general point: pre-emptiveness is a property that a reason has with respect to certain but not necessarily all other reasons. For instance, promissory reasons plausibly are pre-emptive with respect to reasons to do others a favor, but not with respect to reasons to care for one's children. It is therefore unclear why, if a reason is pre-emptive with respect to reasons of kind K, the fact that this reason is defeated by a reason of another kind K* should undermine this reason's pre-emptiveness – a property that holds with respect to reasons of kind K and not of kind K*. Secondly, defeated promissory reasons are still protected from being outweighed by pre-empted reasons. In other words, there are modal truths about such reasons that hold in virtue of the fact that they pre-empt other reasons. For example, the pre-emptiveness of Alan's defeated promissory reason explains why this reason would be conclusive in the absence of a reason to take care of his child *even if* he could do a lot of people a favour by breaking his promise. Pre-emptiveness can have this explanatory power only if it is not undermined by countervailing defeat.

It is also clear that an outweighed promissory reason is still preemptory, which is to say that it still has the *conditional* property of making conformity morally required in the absence of sufficient countervailing reasons. Finally, that the waivability of a reason does not depend on whether it is overridden has already been argued, and that the same holds for voluntariness is immediately evident.

At this stage of the argument, right absolutists might feel inclined to reject my earlier claim that a defeated promissory reason is still a reason.¹⁷ Could this be a plausible view? In my example, the promissory reason is most plausibly seen as being pre-empted by a duty of care, and although the orthodox view distinguishes pre-emptive from undermining defeat, there are also conceptions that take pre-emption to be a special kind of undermining defeat.¹⁸ We can circumvent this issue by considering an example in which the promissory reason is outweighed rather than pre-empted. Suppose, for example, that Alan has the opportunity to engage a babysitter, but feels that his presence at home would comfort his child. In such a case, it does not seem inappropriate to weigh his commitment to Belma against the reason to care for his child, and it is still possible that the latter reason prevails. Or suppose that Alan has a weighty reason to break his promise because doing

¹⁷ Wallace (2019, 173) comes close to asserting this.

¹⁸ See Adams (2021).

so is the only way for him to meet an old friend who is in town for just one day.¹⁹ It seems to me implausible to think that the value of a friendship could never outweigh a promissory reason, but there is no reason to think of this case as one of pre-emptive defeat.

In order to reject my thesis that directed deontic structure obtains on the contributory level, absolutists would have to maintain that *every case* of defeat of a reason with directed deontic structure is also a case of undermining defeat. This, however, is a highly dubious claim. First of all, it is *ad hoc*. Outweighing does not usually involve undermining, and so it is unclear why this should be so in the case of reasons with directed deontic structure. Secondly, it is plainly implausible to deny that there are outweighed reasons with directed deontic structure. This may be clearest in the case of reasons against harm. Surely something counts against harming another person even if it is overall morally permitted. Similarly, something counts against stealing, deceiving, or breaking valid promises even if exceptional circumstances justify these acts. This point is, thirdly, reinforced by the phenomenology of conflict that is characteristic for outweighing defeat but absent from undermining defeat. Why would Alan feel conflicted about meeting his friend if his reason to do so would make it the case that he no longer has *any* reason to keep his promise? Fourthly, the view seems to have the false implication that the outweighed reason cannot join forces with another reason to defeat the defeater, as an undermined reason has no normative force that can be conjoined. For example, if Alan learns that he will reunite with an equally important friend if he participates in Belma's move, this fact should together with the promise tip the balance in favor of doing so. This, however, presupposes that the promise still counts in favor of participating in the move, and is *not* undermined by the competing reason. I conclude that the point stands: directed deontic structure obtains on the contributory level.

4. An inference to the best explanation

I have argued that some moral reasons exhibit a distinctive directed deontic structure that is characteristic of rights, and that they do so regardless of whether they are defeated by competing reasons. The very features that are characteristic of rights thus obtain on the contributory level. These results support rights contributionism, or so shall I argue in this section.

That some moral reasons have a special directed deontic structure that is characteristic of rights calls for explanation. What relation do these reasons bear to rights that could explain this fact? Three possibilities come to mind. The first is that the relevant reasons are *grounded in rights*. On

¹⁹ Cf. Wallace (2019, 176).

such a view, by promising Belma to help her, Alan grants Belma a moral right to his help, and this right provides Alan with a reason to help Belma. This delivers a straightforward explanation of why Alan's reason has a rights-characteristic structure.

The second possibility is that rights do not ground reasons, but are themselves grounded in reasons. On such a view, rights are constituted by reasons that have some of the features that are distinctive of Alan's promissory reason. By promising, Alan generates a reason that is directed, repair-related, pre-emptive, etc., and that (or part of that) grounds Belma's having a right against Alan. This would also provide a straightforward explanation of why Alan's reason has the distinctive features characteristic of rights.

A third possibility, which would also provide the required explanation, is that rights are identical to reasons with directed deontic structure and neither takes metaphysical priority. There is no need to decide between these views here. All three of them entail that reasons with the distinctive features characteristic of rights *necessarily correlate with* rights, and on the assumption that reasons exhibit these features on the contributory level, this entails rights contributionism. This argument may be summarized as follows:

1. Some moral reasons have a distinctive directed deontic structure that is characteristic of rights.
2. The best explanation of this entails that these reasons correlate with rights.
3. Therefore, reasons with the relevant features correlate with rights (from 1 and 2).
4. But reasons have the relevant features even in cases in which it is morally permissible or even morally required not to comply with them.
5. Therefore, in some cases it is morally permissible or even morally required not to comply with a right (from 3 and 4).

Premises (1) and (4) have been argued for above. I supported premise (2) by outlining three views that entail rights contributionism and that seem to provide excellent explanations of (1). Like other claims to a best explanation, (2) is defeasible by providing an equally good alternative explanation. Could rights absolutists provide such an explanation?

Consider, first, a picture like Wallace's, according to which a right/duty-nexus is not constituted by reasons, but is a fundamental normative entity that *provides* reasons, while at the same time necessitating the moral impermissibility of non-compliance. It's very difficult to see how

one can explain that a rights-specific structure obtains at the level of morally outweighed reasons on such a view. Its proponents seem committed to either denying the existence of contributory reasons with directed deontic structure or leaving unexplained the strong analogies that these reasons bear to rights.

Things seem to look better for an absolutist view that allows for an analysis of rights in terms of a conglomerate of a contributory normative notion and a no-defeater condition. For example, absolutists might suggest distinguishing between rights and claims, where claims are taken to be contributory. On the basis of such a distinction, absolutists might hold that the occurrence of contributory reasons with rights-specific characteristics can be explained by the facts that (i) the relevant reasons correlate with claims (as they constitute claims or are provided by claims) and (ii) rights just are undefeated claims.

My worry about this reply is that the view described seems to be a terminological variant of rights contributionism. It does not deny that there are contributory rights, it just calls them ‘claims’ rather than ‘rights’ and reserves the term ‘right’ for absolute rights. This may be a legitimate terminological choice, but it does not support a substantive alternative to contributionism.

Could absolutists avoid this complaint by analyzing rights directly in terms of undefeated reasons of a certain kind without granting the contributory property of having a claim? I’m not sure. First of all, the right kind of reasons for such an analysis are reasons with directed deontic structure, and it is an open question whether this structure can be spelled out in terms of reasons alone.²⁰ Secondly, supposing that this challenge can be met, it is still unclear to me how the view avoids the concession of contributory claims and thus the charge of collapsing into a terminological variant of contributionism. The view at issue admits that there is a unified normative property on the contributory level, which has to be distinguished from the property of being a (standard) moral reason but involves a reason with a directed and pre-emptive structure. It’s not clear to me what it means to deny that the instantiation of this property entails a claim over and above the terminological decision to use this term more restrictively.

In any case, the substantive point that I have argued for is that there is a distinctive and unified normative structure that obtains on the contributory level – directed deontic structure – which is more complex than a simple moral reason and very naturally described in terms of a right/duty-

²⁰ Note that I am presently concerned with an analysis of rights in terms of reasons for *compliance*, not in terms of other reasons, such as reasons for rejecting certain moral principles (cf. Scanlon 1998). This is because I am here looking for an absolutism-friendly explanation of (1), and it is specifically an analysis in terms of directed-deontic reasons for compliance that would seem to provide such an explanation.

nexus. Everyone is free to use the term ‘right’ in a more restrictive way, as applying only in case the moral reason contained in the structure is undefeated, and use some other term for this phenomenon – but this doesn’t change the fact that the structure itself exists and unfolds its normative significance on the contributory level. This substantive point has important upshots for both normative and meta-normative theorizing, no matter whether one uses the term ‘right’ or the term ‘claim’ or some other term to refer to it.

Consider, for example, the view that deontic concepts or properties can be explained in terms of reasons. It is remarkable that so-called deontic buck-passers have hitherto focused almost entirely on overall concepts.²¹ If the argument of this chapter is correct, however, they face the additional and neglected challenge of accounting for *pro tanto* rights and duties in terms of reasons. Moreover, one of the implications of the argument presented is that *pro tanto* rights and duties differ in several crucial respects from standard moral reasons, and (as pointed out above) this means that meeting this challenge will be far from trivial. Obviously, this challenge cannot be avoided by restricting the term ‘right’ to undefeated reasons with directed deontic structure, as it is this structure itself that deontic buck-passers are committed to explaining in terms of reasons alone.

These meta-normative matters deserve to be discussed and explored in more detail, but that will have to wait for another occasion. In the remainder of this chapter, I will focus on rights contributionism’s relevance for normative ethics.

5. *Taurek cases*

In his article ‘Should the Numbers Count?’, John Taurek (1977) considers a number of cases, in which an agent has the choice between (a) doing nothing, (b) doing something that will save a number of people, and (c) doing something that will save a greater number of different people. I will call cases that instantiate this structure *Taurek cases*. A famous example that Taurek adopts from Philippa Foot (1967) is one in which six patients will die unless they are treated with a life-saving drug. While five patients need only one fifth of the drug, the other patient needs all of it to survive – the owner of the drug thus has to choose whether to let five die or one.

As Taurek remarks, many take it to be plausible or even obvious that in cases like this, agents have a duty (in the sense of an overall moral obligation) to choose the option that saves the greater number of people. As everyone agrees, this duty has to be qualified by a *ceteris paribus* clause: there can be relational duties and other factors that can make a difference to what may permissibly be

²¹ See e.g. Stratton-Lake (2002); Bedke (2011).

done in Taurek cases. But if we abstract away from such situation-specific features, the requirement to save the greater number will strike many as plausible. Let's call this:

The Principle of Saving the Greater Number: Other things equal, agents have an (overall) moral obligation to save the greater number in Taurek cases.

This principle is clearly not uncontroversial – Taurek himself famously rejects it, and a number of deontologists have followed him in doing so.²² But it still seems fair to say that it is *prima facie* plausible.

The Principle of Saving the Greater Number is easily vindicated by standard consequentialism, as following it maximizes aggregated welfare, which is what standard consequentialism tells us to do. But it is not so easily vindicated by deontological theories. This is because deontologists are committed to the view that maximizing aggregated welfare is subject to deontological constraints and in many cases impermissible. A famous example that illustrates this point is Thomson's *transplant case*, in which a surgeon has the opportunity to harvest the organs of a healthy person, thereby killing her in order to save five other patients each of which urgently needs one of the healthy person's organs in order to survive.²³ While secretly sacrificing the healthy person would maximize aggregated welfare, and thus be required by the lights of standard versions of consequentialism, deontologists widely agree that doing so is impermissible. Given their rejection of interpersonal aggregation in this and other cases, it is not obvious how they can justify a duty to save the greater number in Taurek cases. Indeed, deontologists who have argued for the Principle of Saving the Greater Number, such as Frances Kamm and T.M. Scanlon, have been accused of relying implicitly on principles of interpersonal aggregation that are in tension with their deontological commitments.²⁴

In what follows, I will argue that there is a plausible and distinctively deontological vindication of the Principle of Saving the Greater Number, which appeals to the contributionist assumption

²² Including Timmermann (2004) and Munoz-Dardé (2005).

²³ See e.g. Thomson (1990, 135). A case with the same structure is already discussed by Foot (1967, 24).

²⁴ See e.g. Otsuka (2000), Timmermann (2004), and Doggett (2009) for this charge against Scanlon (1998, 229–41) and Kamm (1993, Ch. 6). Doggett (2009, 14) concludes that no nonconsequentialist explanation of the Principle of Saving the Greater Number can be given. There are parallels between Scanlon's "tie-breaking argument" and my own proposal below, which also entails that the additional reasons for saving the persons in the bigger group break the tie. But while Scanlon aims to derive this conclusion from contractualist assumptions (unsuccessfully, as I agree with his critics), I derive it from a formal principle about reasons, together with substantive assumptions about rights and how they prevent aggregation – the two arguments are thus very different.

that in Taurek cases, everyone has a *pro tanto* right to be saved – a right that conflicts with and thus has to be weighed against the rights of the others. Independently plausible principles of how the aggregation of reasons interacts with rights can explain why reasons for saving different people allow for aggregation in Taurek cases but not in examples like the transplant case.

6. A Deontological Vindication of the Principle of Saving the Greater Number

Consider the following principle of reasons aggregation:

Reasons Aggregation: If two reasons provide independent support for a response, then the combined support for this response is stronger than the support that each reason provides individually – unless this is prevented by something.

A couple of remarks are in order. Firstly, the principle only applies to reasons that are independent.²⁵ To illustrate, consider the following three reasons to use a certain toothpaste: (a) that it prevents cavities, (b) that it protects dental enamel, (c) that it prevents toothaches. While (a) and (b) are independent reasons to use the toothpaste, (c)'s being a reason is part of the explanation of why (a) is a reason, and so (a) and (c) are not independent. *Reasons Aggregation* entails that (a) and (b) are stronger in combination (if nothing prevents this), while (a) and (c) are not – which is evidently the right result.

A second point to note is that the principle does not assume that reasons aggregation is necessarily *additive*. Consequently, it does not presuppose that the strength or weight of reasons can be represented by numerical values on an interval scale. Thirdly, *Reasons Aggregation* is here understood as relating to reasons in one and the same context. It does not entail that for two independent reasons R1 and R2, if R1 supports ϕ -ing in a context C1 (in which R2 is absent), and R2 supports ϕ -ing in a context C2 (in which R1 is absent), then adding either reason to the other context increases the support for ϕ -ing. R1 and R2 may undermine or attenuate each other when they obtain simultaneously, to the effect that the overall support for X is not increased. This is what happens in the joke about the restaurant that is said to have two flaws: that the food is terrible and that the portions are too small.²⁶ But examples of this structure do not cast doubt on *Reasons*

²⁵ See e.g. Schroeder (2007, 125–26), Kiesewetter (2018, 111–12). For an epistemic case of dependency, see Kiesewetter (2020, 339–40).

²⁶ See Dancy (2004, 16), who ascribes this joke to Jerry Dworkin. Kagan (1988, 14–23) and Nair (2016) discuss structurally analogous examples as challenges for the aggregation of reasons.

Aggregation understood as a claim about the aggregation of reasons in one and the same context. *Reasons Aggregation* is modest in another respect as well, as it allows, fourthly, that aggregation can be prevented. It says no more than that reasons aggregate per default, and that a deviation from this rule needs some kind of explanation.

It is important to note that *Reasons Aggregation* is a formal principle about the logic of reasons and as such should be seen as independent of first-order normative disagreements such as the one between consequentialist and deontological views. The principle claims to be true of epistemic reasons for belief no less than of practical or moral reasons. For example, it seems plausible to think that you have more reason to believe *p* if *p* is supported by two independent sources of information rather than just one of them.

Reasons Aggregation provides a powerful explanation of all the undoubtedly many instances of the aggregation of reasons, which constitutes a strong reason for accepting it. Those who reject this principle face the enormous challenge of providing alternative explanations.²⁷ Critics of certain forms of aggregation are well-advised to focus instead on the explanation of non-aggregation – a possibility that the stated principle explicitly allows for.

In line with *Reasons Aggregation*, deontologists who sympathize with Taurek's view might hold that – perhaps due to some requirement to respect persons and their separateness – the aggregation of reasons is prevented whenever two reasons are based in different persons' welfare. Although it is beyond the scope of this chapter to rule out this view, it strikes me as unnecessarily strong: If I can give pleasure either to one stranger or to a billion other strangers, isn't there more to be said in favour of the second option? A better approach, I suggest, says that what prevents reasons from aggregating are rights.

We have already seen that a right/duty-nexus involves a pre-emptive reason – a reason that is protected from being outweighed by certain other considerations because it defeats them in a special way I described as 'trump-like'. I now want to suggest that part of what this means is that pre-emptive reasons prevent certain weaker competing reasons from aggregating and outweighing the pre-emptive reason in combination.²⁸ Consider, for example, the right to bodily integrity. If the healthy patient in Thomson's transplant case has such a right, this means that the surgeon has a

²⁷ Munoz-Dardé (2005, 200–208) rejects the idea that a duty to save the greater number can be vindicated by an appeal to the aggregation of reasons. It is less obvious that she also rejects *Reasons Aggregation*, as her main worry seems to be that a preponderance of reasons does not entail a duty (see also below). Insofar as she rejects *Reasons Aggregation*, she faces the challenge of explaining why, as she also concedes, reasons "sometimes combine" (2005, 200).

²⁸ It is not part of this view that pre-emptive reasons necessarily prevent all weaker reasons from aggregating. There may be relevant weaker reasons that are not-pre-empted and thus not prevented from aggregating (cf. Voorhoeve 2014).

pre-emptive reason not to remove her organs without consent. And that this reason is pre-emptive partly means that it is protected from being outweighed by any number of organ beneficiaries.²⁹

One might wonder why it should be part of pre-emptive defeat to prevent the aggregation of pre-empted reasons. Couldn't we let these reasons aggregate and still consider them pre-empted? The answer depends on whether we should allow weaker reasons to pre-emptively defeat stronger reasons (or stronger sets of reasons). While this possibility is suggested by some accounts of pre-emptive defeat, I believe that it creates trouble and is better avoided. Most strikingly perhaps, it entails that one sometimes ought to act against one's strongest reasons, which rules out widely shared and independently attractive views about the connection between what one has strongest reason to do on the one hand, and what one ought to do or is rationally permitted to do on the other. While I cannot discuss this question here in any more detail, I will proceed on the assumption that a weaker reason cannot defeat a stronger one (other than by undermining or attenuating it and thus rendering it false that the defeated reason is stronger), and that the same is true for sets of reasons that are stronger in combination. This motivates the idea that the point of pre-emptive defeat consists at least partly in a mechanism that prevents weaker reasons from gaining combinatorial weight through aggregation.

The idea that rights prevent the aggregation of reasons that are subject to pre-emption is, I think, a distinctively deontological one that is compatible with *Reasons Aggregation*, which underlines the point that *Reasons Aggregation* is neutral with respect to the dispute between consequentialism and deontology in ethics. Taken together with *Reasons Aggregation*, it can be employed on behalf of a deontological vindication of the Principle of Saving the Greater Number.

Start with the assumption that everyone who is in need of help in a Taurek case has a *pro tanto* right, against agent A, to being saved. This entails that for every person in need, A has a pre-emptive reason to help her. That this reason is pre-emptive means, in part, that it prevents certain other potential reasons from aggregating. But note an important point. A reason cannot pre-empt another reason that is of the same kind and strength. If it were to do that, the pre-empted reason would likewise pre-empt the pre-emptive reason and the reasons would mutually pre-empt each other. But this is conceptually impossible. Pre-emption is a form of defeat: to say that a reason pre-empts a competing reason implies that it wins that competition. Winning, however, is asymmetric, and just as two competing reasons cannot both win against each other, or prevail over another, they

²⁹ I assume that the reason against killing the healthy patient pre-empts the reason for saving the suffering patient. While this is a substantive normative assumption, it strikes me as dialectically unproblematic, as it is very likely to be shared by those who think that the healthy patient has an undefeated moral right not to be killed in the first place.

cannot mutually pre-empt each other. It follows from this that the ban on aggregation that is involved in each of A's reasons for saving a person does not apply to the other pre-emptive reasons for saving a person. These reasons aggregate, according to *Reasons Aggregation*, simply because nothing prevents them from doing so. Since they aggregate, there is overall more reason to save the greater number,³⁰ which means that the rights of those in the smaller group are defeated by stronger competing reasons, while the rights of those in the larger group are undefeated.³¹ As we are morally required to comply with undefeated rights, A is morally required to save all of those who are part of the larger group.

This justification of the duty to save the greater number is genuinely deontological, as it does not base this duty on any value ascribed to states of affairs, but on (i) individual rights that correlate with directed reasons, (ii) a formal principle about the aggregation of normative reasons in general, and (iii) a general rights-based account of the limits of aggregation, which explains why aggregation is prevented in the cases that are uncontroversial among deontologists. These assumptions are not uncontroversial, of course, and they are in need of more defence than I can give them here. But neither are they *ad hoc* or pre-theoretically implausible, and together they make for an attractive view on the matter that merits serious consideration.

One might wonder why rights contributionism is an essential part of this story. Couldn't we vindicate a duty to save the greater number just by appeal to aggregating reasons for saving lives without assuming that these reasons correspond to rights?³² I don't want to insist that this is impossible. But critics of such an approach have pointed out that there is a considerable gap between judging that the balance of reasons favours an action and judging that there is a duty to perform it.³³ By contrast, the rights contributionist argument for the duty to save the greater number does not rely on any assumption that duties can be derived from the balance of reasons. It derives this duty from the fact that the people in the larger group have an undefeated right to be saved. In this argument, *Reasons Aggregation* is needed to explain why the duties to those in the

³⁰ This is on the assumption that the reasons for saving each are equally strong. One might instead hold that they are incomparable (or 'on a par') and that, since incomparable reasons are insensitive to certain kinds of improvements, aggregation does not necessitate the conclusion that there is more reason to save the greater number. However, the kind of improvements incomparable reasons are insensitive to are *small* improvements, while the improvement in a Taurek case is a highly significant one. This suggests that aggregation supports the conclusion that there is most reason to save the greater number even if the reasons in question are incomparable.

³¹ I assume that a right or duty is defeated iff for every set of reasons S that contains the reason that is constitutively related to the right or duty, there is a set of competing reasons S* that is at least as strong as S. Since the set of reasons for saving the people in the smaller group is not stronger than any set of competing reasons, the rights of these people are defeated, while the same cannot be said about the rights of the people in the larger group.

³² Some incidental remarks of Parfit (2003, 388) suggest that he was sympathetic to this view.

³³ See esp. Munoz-Dardé (2005, 202–8).

smaller group are defeated, while the duties to those in the larger group are not – but there is no assumption at work that there is a duty to save the greater number *because* there is stronger reason to do so. The appeal to contributory rights in Taurek cases thus makes a significant dialectical difference.

7. Conclusion

Let me briefly wrap up this chapter. In sections 1–4 I argued that *pro tanto* reasons can have directed deontic structure – a structure that is characteristic of and plausibly entails a right/duty-nexus. In sections 5–6, I turned to possible implications of this result, focusing on the numbers debate in normative ethics. I argued that deontologists can provide a vindication of the duty to save the greater number that appeals to *pro tanto* rights to be rescued and an independently attractive account of how and when rights-correlating reasons aggregate or are prevented from doing so.

As noted already, more needs to be said to defend the suggested approach to rescue conflicts, especially against views according to which arbitrary choice or randomized procedures are permissible (or even required) in Taurek cases. I did not have space to discuss either the anti-aggregationist worry that fairness requires holding a lottery rather than saving the greater number, or the threshold-deontological worry that the present view cannot accommodate certain allegedly plausible trade-offs (in particular trade-offs between a pre-emptive reason and a huge number of pre-empted reasons). And while the correlation between rights and reasons with directed deontic structure argued for in sections 1–4 provides support for the assumption that there are rights to be rescued, I have not defended this assumption here against contrary views.³⁴ I hope to rectify these omissions on another occasion. Here I limit myself to the more modest conclusion that rights contributionism clears the way for an interesting, *prima facie* attractive and distinctively deontological justification of the duty to save the greater number.³⁵

³⁴ See e.g. Foot (1977, 44–49), Thomson (1990, 160–63).

³⁵ For valuable feedback on earlier versions of this chapter, I am very grateful to Rowan Cruft, Philip Fox, Jan Gertken, Tim Henning, Felix Koch, Kirsten Meyer, Phil Montague, Thomas Schmidt, Julia Tannenbaum, Mark Timmons, Andreas Vassiliou, Jay Wallace, Jack Woods, two anonymous referees, and audiences at Bayreuth, Berlin, Bielefeld, Erlangen, Heidelberg, Lillehammer, Oxford, Southampton, Stuttgart, Zurich, and the Arizona Workshop in Normative Ethics 2022. Work on this chapter has been funded by the Deutsche Forschungsgemeinschaft (DFG, German Research Foundation, Centre for Advanced Studies “Human Abilities”, project no. 409272951) and the European Union (Horizon Europe, ERC Grant 101040439, REASONS FIRST). Views and opinions expressed are however those of the author only and do not necessarily reflect those of the European Union or the European Research Council Executive Agency. Neither the European Union nor the granting authority can be held responsible for them.

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