

From Rights to Prerogatives

Daniel Muñoz
Monash University

Forthcoming in *Philosophy and Phenomenological Research*

Deontologists believe in two key exceptions to the duty to promote the good: restrictions forbid us from harming others, and prerogatives permit us not to harm ourselves. How are restrictions and prerogatives related? A promising answer is that they share a source in rights. I argue that prerogatives cannot be grounded in familiar kinds of rights, only in something much stranger: waivable rights against oneself.

1. Introduction

Consequentialists think we always have to make things go best: if I can save five trapped workers only by throwing you in front of a runaway trolley, I have to do it. Indeed, if the only way to save them is for you to throw *yourself*, then *you* have to do it—so long as it’s really for the best.¹

Deontologists disagree with this view in two ways. First, they believe in restrictions, which tend to make acts wrong even if their outcome is fabulous. For example, you have rights against harm, which restrict my choices by making it wrong for me to save the five at your expense.

What about saving them at your own expense? You don’t violate any rights by throwing yourself onto the tracks. But that kind of sacrifice doesn’t seem obligatory; it seems optional.

Deontologists express this by saying that you have a prerogative not to harm yourself. Prerogatives tend to make it permissible, rather than wrong, to do acts with a suboptimal outcome.

Restrictions and prerogatives appear to be intimately linked. I may not kill you; you may choose not to kill yourself. These don’t sound like unrelated facts. Instead morality seems to be saying: when the question is whether to harm *you*, it is *you* who should get to decide. (Within reasonable limits—you aren’t attacking anyone, the stakes aren’t stratospheric, etc.)

¹ I restrict my discussion to maximizing consequentialists (“satisficers” like Slote (1984a) believe in prerogatives), and set aside issues raised by uncertainty as well as by rule-centric theories (Hooker 2000). Later I discuss “consequentializers” who believe in rights against harm.

But this leads deontologists to a dilemma. Without a common source for restrictions and prerogatives, their view is disunified. And yet it is hard to find a single source for both.

We already know the source of restrictions: they are based in rights.² I may not throw you onto the tracks because you have rights against harm. In particular, you have what's known as a "claim right"—a right held by someone, against someone, with a specific content that the right concerns (Hohfeld 1919, Thomson 1990). Here, you have a right against me that I not throw you in front of trolleys, and this restricts me; I may not promote the good by killing you.

As for the source of prerogatives, deontologists disagree on details, but agree that we don't need any fancy new notions beyond interests and restrictions. Some, following Scheffler (1994), base prerogatives in the special weight of self-interest (e.g. Lazar 2018). Others, like Anscombe (1967), seem to view prerogatives as the absence of restrictions: we may do less than best so long as we don't violate any rights. (No one has a right that you throw yourself on the tracks!) On this optimistic view we can derive prerogatives from the ordinary idea of rights against other people.

I want to resist both approaches to prerogatives. Scheffler's view is radically disunified, since he sees no moral link between self-sacrifice and the imposition of sacrifices onto others. We should be looking for a connection here. (At least, I will assume that it's too early to give up the search.)

But nor do I share Anscombe's optimism. There are steep challenges to any inference from rights to prerogatives. If prerogatives are the rabbit, we will need a rather special hat. Prerogatives are not rights against others; nor are they the absence of their rights against us. The only viable source for prerogatives in the realm of rights, I argue, is a much stranger item—waivable rights against oneself. Prerogatives can be derived from the extraordinary claim that rights are *Self-Other Symmetric*: that we have the same basic moral rights against ourselves as we do against others, rights that proscribe harm and bodily intrusion, and that are waived via consent. The idea is that, just as

² There may be (unimportant) exceptions; perhaps it's wrong to break one relic to save five.

restrictions come from rights against others, prerogatives come from rights against oneself.

Here is the basic picture. We all start out with rights that make our bodies and things, by default, off limits to everyone. The default can be overridden if we waive our rights by consenting. If I cannot get your consent, however, your rights restrict my choices. I may not lob you in front of the trolley against your will. But you don't have to worry about throwing *yourself* against your own will: you consent to what you decide, and so you can't intentionally violate your own rights. That's why your own rights don't restrict you. Instead they serve a permissive function. If you leave them in play, you can lean on them when defending your actions to others. This, I think, is what you would be doing if you tried to defend your choice not to kill yourself to save five. Or suppose I demand that you give your kidney to the needy. You can defend your refusal by saying: "It's *mine*," just as you might say "It's *theirs*" to defend your choice not to steal. You aren't saying that it would be wrong to donate. You are just saying that, where *your body* is concerned, there is a presumption that it not be harmed without *your consent*. It is this idea, in my view, that unifies restrictions and prerogatives.

I begin with the negative point: we cannot derive prerogatives from familiar kinds of rights (§2). After briefly defending rights against oneself (§3), I use Kagan's "Self-Constraint Argument" (§§4–5) as a springboard for my own derivation of prerogatives (§6). I conclude with objections (§7) and reflections (§8), ultimately leaving the deontologist's dilemma open. Even if my argument works, we are left with a stark choice. Do we unify our account of restrictions and prerogatives by adopting a radically Self-Other Symmetric picture of rights, or do we leave our account disunified to preserve the Self-Other Asymmetry?

2. Why familiar kinds of rights are not enough

We are looking for a way to derive prerogatives from rights. Prerogatives, as a reminder, make it permissible not to promote the greater good, even when we could do so without violating any

deontological restrictions.

My plain is to develop Shelly Kagan's idea that we can derive prerogatives from waivable rights against oneself. But these are rather outré entities. Can't we use a less exotic, more familiar kind of right? Surprisingly, no. Let's take a hard look at the familiar options.

The simplest proposal is that prerogatives are derived, not from rights held *against* someone, but from rights *to do* things. You have a prerogative to keep your kidney, rather than donate, because you have a right to keep it. Sounds true enough. But we haven't derived anything, if by 'a right to keep the kidney', we just mean 'a prerogative to keep the kidney'. We are swapping out synonyms, not getting to the source.

To derive prerogatives from rights in any interesting way, we need to start from an independent idea of rights. The key idea here is that of a claim right, a right held by someone against someone.³ (From now on, when I talk about rights, I just mean claim rights.) We can be open-minded about where rights come from and which we have. We just need a minimal core concept: rights count against a certain way of acting except, and until, they are successfully waived by the right-holder's consent.

The idea of interpersonal rights—rights held by someone, against someone else—is perfectly familiar. It would be a coup for deontology if we could account for prerogatives using just these rights. But how would that work?

A tempting thought is that prerogatives are simply rights against others that they not make us do (or stop us from doing) a certain action (see Benn 2017: 278). I call these *interference rights* (cf. Bolinger 2017: 43). Interference rights are nice; they forbid others from taking our choice into their hands. But a restriction on others isn't a prerogative for us: it can't make our choices any less *wrong*.

³ For Hohfeld (1919), claim rights are equivalent to duties. My right (against you) that you give me \$5 *just is* your duty (to me) to give it. I won't make this assumption, since none of my arguments will depend on what "duties" are.

Indeed, interference rights often protect actions that are clearly wrong.⁴ Suppose we all promise not to stop members of a certain sect from feeding their children a harmful herb. Now the group has interference rights, but what they do is still wrong. The group's rights don't make it any more justifiable for them to pointlessly harm kids, just as my rights not to be interfered with when voting don't justify me in voting for a terrible candidate.⁵

The next tempting thought, found in the work of G.E.M. Anscombe (1967), is that a prerogative is the absence of rights against the agent. This happy absence is known as a "privilege" (Hohfeld 1919) or a *liberty* (Gilbert 2018). I have a liberty to do something just if people lack the right against me that I not do it. (I have the liberty "as regards" whoever lacks the right.) Liberties are nice, too, but they don't entail prerogatives. It's possible to do wrong even with all the liberty in the world: some actions are *impersonally* wrong, wronging no one, because they are opposed by moral reasons with another source besides rights. Suppose I dump sludge onto an unowned natural wonder, like the moon. That's wrong; I have massive moral reasons not to ruin lovely things (Wedgwood 2013: 44, fn. 9).⁶ But since no one owns the moon, I am at liberty (as regards everyone) to spoil it. Liberties prevent wrongings, but not wrongness.⁷

(The same goes for "protected liberties" (Gilbert 2018: 19), which combine a liberty with interference rights. If everyone promises me not to interfere with my lunar pollution schemes, my

⁴ This possibility is what Wertheimer (1996: 282), Enoch (2002), Herstein (2012), and (arguably) Waldron (1981) call a "right to do wrong." See Bolinger (2017) for illuminating discussion.

⁵ There can also be prerogatives without interference rights. Suppose I say: "You may have my treasure—if you can find it!" I retain the prerogative to keep it, but waive the right that you let me.

⁶ For more examples, see Owens 2012: 45 and Liberto 2012: 398. Consider also some cases from creation ethics. If it's wrong not to create happy people—even though the nonexistent can't be wronged—then not creating is impersonally wrong. (See McMahan 1981 on the procreation asymmetry.) Or suppose one has the choice between creating one person or a different, far happier person. It is arguably wrong to create the less happy person, even though no one is wronged by the choice; no actual people are left worse off. (See Parfit 1984 on the non-identity problem.)

⁷ There is also a conceptual reason why liberties can't be prerogatives. Prerogatives need to have *weights*, since they can be outweighed by reasons. (If my kidney can save 1,000 lives, I must donate.) But liberties have no weights. They are just the absence of rights—how could absences be weighty?

liberty to pollute is protected, but spoiling the moon is still wrong.)

I conclude that (lacks of) interpersonal rights aren't the source of prerogatives. But before we turn to waivable rights against oneself, we have one last familiar option, due to Paul Hurley (1995). We might derive prerogatives from *unwaivable* rights against oneself. The basic idea is that everyone is morally protected: an agent has "patient-protecting" reasons not to interfere with anyone, even for the greater good. (Roughly, "patient-protecting" means "based in rights.") When the patient is another person, the result is an *obligation* not to do harm, even for the greater good. But when the patient is the agent? Then the result is a *permission* not to do harm—a "protected sphere" of acceptable acts. "The agent must leave himself a range of morally permissible options" (Hurley 1995: 176). When the "patient" is oneself, the "protection" is a prerogative.

Hurley deserves credit for pioneering a Self-Other Symmetric view, but I don't think the machinery quite works. The problem is with "patient-protecting reasons." What do these reasons favor? What are they reasons *for*? The answer is easy enough in two-person cases. The reasons forbid harming the patient; they are a restriction. But Hurley can't say that one has the same reason not to harm oneself, as if there were a restriction on being the hero. Self-sacrifice isn't wrong; it's optional! (This foreshadows my objection to Kagan in §5.)

Perhaps we should interpret Hurley as saying that your patient-protecting reasons favor a special act—permitting a sphere for yourself—but it's unclear what this could mean. You don't *decide* that you are permitted not to save the five; you just *are* permitted. There appears to be no room for patient-protecting reasons vis-à-vis oneself.⁸

What's going wrong with these proposals?⁹ Why can't we squeeze out a prerogative from

⁸ At times, Hurley (1995: 176) suggests that patient-protecting reasons don't weigh in favor of *doing an action*, but only in favor of *an action's being permissible* (cf. Kagan 1989: 208). This isn't the normal way we think of reasons.

⁹ I should mention one more familiar view. Kamm (1992: 358–59, 1996, 2007: 16, 17) thinks prerogatives and restrictions share a source in the conception of persons as "ends-in-themselves."

privileges, liberties, and reasons to permit? The problem, I think, is that prerogatives have got to be linked to wrongness; they have to weigh against the agent's (otherwise compelling) reasons to make the sacrifice. An agent's interference rights only carry weight for others; liberties just prevent wrongings; and "reasons to permit" only weigh against reasons not to permit. None of these can be a counterweight to the agent's reasons to make a sacrifice; so, none of them stop those reasons from grounding a requirement.

What kind of right would do the job? We need something that bears on the choice to sacrifice: a right *against the agent*—say, a right against the organ donor that she keep her kidney, or a right against the bystander on the bridge that she not be thrown before the trolley. Who holds the right? Clearly, not somebody other than the agent; so, it must be held by the agent herself. Moreover, the right has to be waivable, since if it were unwaivable (Hurley-style), it would be a restriction instead of a prerogative. And with that, we have come back around to (Kagan-style) waivable rights against oneself. These rights are an unusual first premise. But if we want to derive prerogatives from rights, there is nowhere else to start.

3. Can we defend waivable rights against oneself?

Taking inspiration from Kagan's Self-Constraint Argument, I will try to derive prerogatives from the idea that we have the same rights against ourselves as against others: they have the same content, confer the same kind of moral status, and are waived in the same ways. This is the conception of rights as *Self-Other Symmetric*.

The standard line on Symmetry is that it is obviously false. Counterexamples have been kicked around for decades, and rights against oneself are rarely mentioned except as the *absurdum* of

But Kamm is not talking about "sources" in my sense. Unlike Hurley and me, Kamm doesn't think prerogatives can be derived from rights, and she dismisses rights against oneself (2007: 235, 241).

a *reductio*. I expect most readers will see Kagan’s argument as doomed from the start; my view is that it’s doomed only about halfway through. Let me explain, then, why I think the Self-Other Symmetry is not as outrageous as it might sound, by taking on a few objections.

The classic objection is that rights against oneself are paradoxical because they imply an impossible power:

Paradox

If you have a right against yourself, two things follow. You are under an obligation (since the right is *against* you), and you have a power to waive it (since it’s *your* right)—but one can’t release oneself from an obligation. (Singer 1959; see also O’Neill 2001)

The problem, we are told, is that it’s impossible for anyone to release themselves from obligations (“in any...way whatsoever,” adds Singer 1959: 202). But why think that? Self-release seems to happen all the time. A student can release himself from the obligation to show up for exams by signing a form to drop a class (Fruh 2014). A sovereign, Cohen (1996: 170) argues, can release herself from pesky legal duties by changing the law. What’s so “paradoxical” about this? In each case, the agent seems to be bound by an obligation *until* the moment of release (cf. Rosati 2011 134–35). The sovereign is bound until she changes the law; the student is bound until he signs the form.

The same is true, on a Symmetric view, in the case of self-consent. Your rights bind you *until* you waive them by making decisions and becoming a willing party. Just as I have a duty not to harm you *until* you give consent, you have the same duty to yourself *until* you become a consenting party—which you do simply by making decisions, like the decision to give a kidney.¹⁰

Self-release is also the key to the second objection, which is that Symmetry is supposed to rule out all kinds of permissible self-harm. For instance:

Minimal Pair

If I poke your eyeball, that’s wrong. If I poke my own, that’s not wrong. Doesn’t that show that people have this right only against others? (Stocker 1976: 211, Slotte 1984b: 180–81)

¹⁰ For more on the paradox of duties to oneself, see Muñoz forthcoming and Schaab 2020.

But why do we need a Self-Other Asymmetry to explain this? A simpler explanation is that it's wrong for me to harm you because you don't consent, whereas I do consent to my own action. The Self-Other Symmetry doesn't say that you have to tiptoe around your own rights as if you were an unwilling other. The whole point is that you treat yourself like a relevantly similar other—which means, at a minimum, someone equally willing.

A final worry is that Symmetric rights are just a desperate gimmick, rather than a natural source for prerogatives:

No Motivation

There is no a priori reason to think rights against oneself ground prerogatives.

I reject this, for two reasons already mentioned.¹¹ One is that restrictions and prerogatives intuitively seem to share a source. I may not throw you onto the trolley tracks. You don't have to throw yourself. It would be *bizarre* if this were a total moral coincidence. But if restrictions and prerogatives share a source, that leads naturally to the idea that my rights give me permissions around where they would impose restrictions onto others—exactly where Symmetry puts my rights against myself.

The more illuminating reason comes out when we reflect on how we actually defend ourselves when we do the moral minimum. Suppose I confront you: “How *dare* you keep that spare kidney! You could donate it to me and do an awful lot of good—far more than you could do by leaving it in.” A natural response would be: “But it's *mine*.” This is not your way of saying, “I matter more than you—so my lesser good outweighs your greater good.” You might well think that helping me is the best thing you could do; your point is just that you don't *have* to do it, since your kidney belongs to you. This is strikingly like how you might respond if I demanded that you *steal* a kidney for me from a healthy stranger. You could say: “But it's *theirs*.” Again, you aren't valuing the

¹¹ I also have a third reason: basing prerogatives in rights may help us avoid counterexamples to the Schefflerian view that prerogatives are based in self-interest. (The main counterexamples are costless favors and sacrificing for someone else's lesser good.) I go into detail in an unpublished manuscript called “Why Isn't Supererogation Wrong?”

stranger's welfare over mine. You are just citing their rights, which restrict your choices.

That is the fundamental insight that I want to develop. Invoking a prerogative is an awful lot like invoking a restriction placed by someone else's rights. The reason why, I think, is that prerogatives are *also* rights—waivable rights against oneself. We now turn to the only serious discussion of this idea in the history of ethics: Kagan's Self-Constraint Argument.

4. The Self-Constraint Argument

The Self-Constraint Argument starts from Self-Other Symmetric rights and concludes that self-sacrifice is optional (in boring cases like the ones we are interested in, where a moderate harm to self prevents a bigger harm to others). To say that self-sacrifice is optional is to say that it's both permissible and omissible; we may do it, and we may refrain. So our Argument will need two parts. Let's start with the part that tries to show permissibility.

Why is self-sacrifice permissible? Here is Kagan (1989: 209):

...if the agent is willing to make the sacrifice, then he need only grant himself permission to do so—and it will no longer violate the constraint. That is, if the agent wants to make the sacrifice, he is permitted to do so.

This strikes me as basically right. Let me illustrate with an example. Suppose Amanda can save Bert, a stranger, only by causing herself a serious harm—say, crushing her arm. Kagan's point is that this wouldn't be wrong, because Amanda has the consent of the person who loses the arm—namely, herself! It is as if she had been faced with the choice of whether to save Bert by crushing an arm belonging to Clayton, a consenting third party. It is fine to cause moderate harms for the greater good when we have consent—and we naturally consent to our own actions. I'll punch up this idea later (section 6), but for now, let's move to the second half of the Argument.

We have seen that rights don't forbid self-sacrifice. But why should they permit us *not* to do it? Here is Kagan:

If forcing a certain sacrifice on a person without his permission is forbidden, then it is forbidden for that person to force the sacrifice upon himself against his will. Thus, if an agent does not desire to make that sacrifice, he need only withhold his permission qua patient from himself qua agent. Making the sacrifice in such a situation is forbidden—for it violates the constraint. A fortiori, it is not *required*. (1989: 209, emphasis original)

Let's put this in terms of our example again.

Start with the three-person case. Clayton has a right not to be harmed. So, we should expect it to be wrong for Amanda to crush his arm without consent, even for Bert's greater good. At least in this case, Bert's needs are outweighed by Clayton's rights, which makes harming Clayton wrong; it follows that Amanda is permitted not to harm him. Given Symmetry, the same goes for Amanda's choice not to harm *herself*. Even with Bert's life on the line, crushing her own arm is wrong—because of Amanda's rights against herself—unless she consents. We suppose that she doesn't consent. So, the sacrifice is wrong, and that is why it's omissible.

Laid out a bit more carefully:

1. Amanda has a right against herself that she not crush her arm.
2. If she has that right, then it's wrong for her to crush the arm if she doesn't consent.
3. She doesn't consent.
4. If an act is wrong, not doing that act is permissible.

So: Amanda is permitted not to crush her own arm.

Looks valid to me. And premises 1 and 3 are just stipulations about the case: that Amanda has a right against herself, which she hasn't elected to waive.

What about the other premises? Premise 4, which says that we may omit wrongs, is just good deontic logic. The only exceptions are dilemmas, where all of one's options are forbidden (Marcus 1980)—but we are looking at a sacrifice that is supposed to be sweetly optional. Premise 2, meanwhile, seems like a truism about rights: it expresses the idea that one may not infringe rights without consent (at least, not in simple cases like this one).

And so we seem to have a sound argument for the permission not to sacrifice. Combine it with its other half, and we have an argument from rights against oneself to the optionality of self-sacrifice—we have shown how Self-Other Symmetric rights might entail a prerogative.

5. The Wrongness Problem

Just one problem: even granting rights against oneself, the Self-Constraint Argument has a critical flaw. Recall how the second half starts:

1. Amanda has a right against herself that she not crush her arm.
2. If she has that right, then it's **wrong** for her to crush the arm if she doesn't consent.
3. She doesn't consent.

From here, we can infer that Amanda's sacrifice is wrong (and from there, we infer that she doesn't have to make it). But that kind of sacrifice *isn't* wrong, no matter what the agent chooses. By hypothesis, this kind of self-sacrifice is morally optional.

This is the Wrongness Problem: the argument tries to show that self-sacrifice is omissible by showing that, if the agents refrain, it is wrong—but it can't be wrong. The Self-Constraint Argument fails. Instead of a prerogative, Kagan has derived a conditional restriction; our rights make it wrong to self-sacrifice if we don't do it. A real prerogative wouldn't work like this; it would have a purely justifying force (cf. Gert 2007, Hurka and Shubert 2012). That is the lesson of the Wrongness Problem. Now our task is clear. To go beyond Kagan's argument, we need to derive a pure permission, not a conditional restriction, from a waivable right against oneself.

6. The nature of prerogatives: deliberation and defense

How could our rights make things omissible without making them wrong? We need a different approach, a way to show how rights could matter without being wrong-makers.

Well, what is a wrong-maker? I think wrong-makers are opposing (moral) *reasons*.¹² A reason is something that favors a way of acting, tending to make it good and obligatory, constraining an agent's deliberation. Reasons make things choiceworthy and serve as the ground of rightness and wrongness. Where there is a wrong action, there is always a preponderance of reasons against it.

Prerogatives are a bit like reasons. Both have weights that attach to a way of acting. But whereas a reason tends to make things good and obligatory, prerogatives merely tend to make them permissible. A prerogative to keep my kidney does not require me to keep it; it doesn't make keeping it a good thing to do; it merely makes it permissible for me to keep it. That's the whole job description of prerogatives: they (1) aren't reasons, but (2) they still tend to make things permissible.

Now that we know what prerogatives are, we have a clear strategy to derive them rights. We need to show (1) that rights against oneself aren't reasons, but also (2) that they tend to make it permissible not to self-sacrifice.

Why aren't rights against oneself reasons? The key fact, I think, is that there is no way to violate them intentionally.¹³ For example: I have a right against myself that I not poke my own eye. But if I decide to poke it, I thereby consent to being poked, so I waive the right just in time. Same goes for Amanda and her right not to have her arms crushed; if she decides to crush them and save Bert, she waives the right, and no one is wronged. There is a word for this kind of feature, the kind that evaporates in cases where it would normally have an influence: such factors are *finkish*. (A classic example: fragile things normally shatter when struck. But if my fragile glass turns to stone

¹² For simplicity, I ignore non-moral reasons, though some writers think of them as playing the role of prerogatives within the moral realm (see Portmore 2011). I should note that some views might not ground rightness directly in reasons, but instead in facts about which rules are useful (Hooker 2000), or which principles no one could reasonably reject (Scanlon 1998). Also, as I say in section 2, I think some moral reasons don't come from rights, but from the value of outcomes.

¹³ We need an exception if we believe in unwaivable rights against oneself, which really are restrictions. The line between waivable and unwaivable is also the line between permissible self-sacrifice and wronging oneself.

whenever someone strikes it, it won't shatter; its fragility is finkish.)¹⁴

My claim is that finkish rights, which are waived by the choice to do what they forbid, aren't reasons. We consent to our own acts. Consent waives our rights. So, our rights don't restrict our own acts. We found a version of this idea in Kagan's Self-Constraint Argument. I think the idea is pretty intuitive. But since it is carrying a lot of argumentative weight, let me try to support it.

I'll start with a series of examples, which suggest that finkish factors in general can't be reasons. Imagine that there is a nifty prize behind a door. Other things equal, you should go through and collect it. Next, suppose the door is rigged with a bomb, which will grievously injure you upon approach; the bomb is a strong reason against entering the door; now you should just give up on the prize. But what if you can disable the bomb simply by clapping your hands? Then the bomb is no longer a reason against entering; it's only a reason against *entering without clapping*; the bomb constrains your choice of means. Finally, suppose you know for certain that the bomb can't harm you, because it's programmed to deactivate whenever you are nearby. Now you are free to enter the room however you like. Since the bomb is guaranteed not to blow up on you, it is not something that you have to take account of in deliberation. It is no longer a reason at all. From a deliberative point of view, the bomb is as good as gone. The bomb, of course, is finkish in much the same way as a finkish right, which is sure never to morally "blow up." You're guaranteed not to violate the right, so it won't ever make your actions wrong. By analogy, it shouldn't be a reason at all.

Underlying these examples, I think, is a deeper principle about reasons. Reasons have to be *stable* over your decisions, in the sense that they can't depend for their force on your choosing to do what they recommend.

¹⁴ See Lewis (1997) and especially Martin (1994), who imagines a machine, called a (reverse) "fink," hooked up to a live wire. Normally, live wires shock you if you touch them. But the fink detects incoming touchers and, during contact, kills the current. Intuitively, even though the finked wire won't shock if touched, the wire is still disposed to shock. The disposition is just finkish: the conditions in which it normally manifests are also conditions where the manifestation is thwarted.

Stability

If R is a reason for A to φ , then R cannot have force only conditional on A's φ -ing.¹⁵

Clearly, finkish factors aren't stable. In particular, a finkish right against harm isn't stable over your choice of whether to do the harm. If the harm is chosen, the right is waived; so the right only retains its force if the agent complies with the right by *not* doing harm. The right only has force given that one is going to do what it says. That makes it unfit to be a reason.

Stability is an attractive principle, with defenders in ethics (Nagel 1970: 53, Muñoz forthcoming) and decision theory (Hare and Hedden 2006).¹⁶ The basic idea is that, since reasons guide deliberation, they ought to be able to “talk you into” doing things; it's not enough if they matter only from the point of view of those already convinced.

We can also derive Stability from a deeper view about what reasons are. The view: reasons are premises in good practical reasoning (Setiya 2014). A reason is something it makes sense to use in reasoning about what to do. But good reasoning can't be circular. Deliberation about what to shouldn't assume that one will in fact decide one way rather than the other. (The same is true of theoretical reasoning; it's fallacious to assume a conclusion in order to “derive” it.) Now consider the following unstable would-be reason: Amanda has a right that she not crush her arms. Since the right is finkish, it only counts *against* the crushing if she *doesn't* decide to crush them; the choice to crush would waive the right. This disqualifies the right from being a reason. The right only counts given that Amanda won't sacrifice her arms—but she is in the middle of deciding whether to do so. To be a good open-minded reasoner, she can't take her decision's outcome for granted. She can't treat her unstable right as a reason.

¹⁵ A stronger principle would add that R cannot have force only conditional on A's not φ -ing.

¹⁶ Nagel (1970: 53) gives the charming example of taking a door off its hinges in order to procure a replacement for one's soon-to-be missing door. One needs the door only if one removes it—so the need isn't a reason for removal. Nagel's principle, along with Hare and Hedden's (2006), is put in terms of what the agents expects. My principle doesn't mention expectations, but this won't make a difference, since I am only considering agents who are fully informed.

So I think we have an solid case for our first conclusion: rights against oneself can't be reasons because they are finkish (and therefore unstable).¹⁷ But why doesn't that just erase them from the moral landscape? How could such flighty rights have so much permissive power? If they aren't reasons, how could they be prerogatives?

Here, we need to remember that reasons—construed narrowly as constraints on good practical reasoning—aren't the be-all and end-all of ethics. There is more to morality than acting on sound deliberation; we must also *defend* our actions when the moral community comes along demanding better. Imagine that I go up to Amanda and say, "How dare you not crush your arm! Bert is in dire need, and you have most reason to save him!" She might defend herself by leaning on her rights. "But it's *my* body," she could insist, "and I'm not willing to harm it." Here Amanda is not making excuses (as if to say, "Give me a break—I'm biased"). Nor is the point that she has special reasons to favor herself. The point is that she doesn't *owe* me a reason. Her rights allow her to act against the balance of reasons; they make it defensible to do less than best.

That is the main new idea of my argument: unwaived rights count in defense, even if they don't constrain deliberation. Let me spell this out a bit. When we take the defensive stance, our aim isn't to argue that our decision was optimally guided by reasons, or that it was excusably flawed. To defend one's decision is to show that it was justifiable, that it was good enough by the standards of the moral community. Now, since defending oneself isn't the same as deliberating about what to do, we no longer have to worry about the sin of circular reasoning. In defense, we may take for granted that we aren't doing the very best thing. That's why Amanda is allowed to cite her unwaived finkish right to defend keeping her arm, even though that right doesn't constrain her deliberation. Her right evaporates when acted against, but not when leaned on as a justification. "I have a right that I'm unwilling to waive" is a poor reason but, in this case, a decent defense.

¹⁷ See also Waldron (1981: 28) on why "rights to do" are not reasons.

Now we have both parts of the argument. Finkish rights aren't reasons because they vanish when you act against them; but since you can still bring them up to defend yourself, these rights have power as prerogatives. Before we get to objections, let's suppose that the argument works and consider what follows.¹⁸

Some writers who accept prerogatives take them as a primitive (e.g. Hurka and Shubert 2012). I have argued that we can *explain* where prerogatives come from using familiar principles—in this case, Stability, the Self-Other Symmetry, and the idea that deciding waives rights.

Moreover, if the explanation works, we also learn something about the nature of rights. They are not always reasons for action, meant to guide deliberation and restrict our choices. Rights aren't essentially restrictions; the more essential link is between rights and standing, whether that is the standing to rebuff demands or to press them.

Of course, it is hardly a new idea that rights confer standing (see for example Thomson 1990: 2, Kamm 1992). My point here is that, given the Self-Other Symmetry, that standing has a second function. One gains the power to place restrictions on others *and* to insist on greater freedom for oneself. To have a waivable right against anyone, whether oneself or another, is to have some control over what may be demanded of them. A right against oneself thus opens up sphere of freedom, to borrow Hurley's phrase. One may waive the right and venture beyond the call of duty, or lean on the right to defend doing less.

This line of thought convinces me that rights against oneself aren't an ad hoc concoction; they are the natural home of prerogatives, and that is why moral freedom flows so nicely from this part of the realm of rights.

¹⁸ In the text, I don't spell out the idea of moral defense; I just say it is like rebuffing a moral demand. But perhaps we should see both defending and demanding as moves in joint deliberation. If that's right, then my claim that prerogatives count "only in defense" should not be taken to mean that they never constrain deliberation of any kind. Perhaps prerogatives constrain joint deliberation, in the sense that they block demands.

7. Objections

I have argued that waivable rights against oneself are finkish—waived by the decision to do what they forbid—and that this makes them prerogatives rather than restrictions.

The key idea in my argument is that an unwaived right, even a finkish one, counts in moral defense. For example, suppose you have a right that you keep your kidney. You can cite that right to justify keeping the kidney. If I demand you hand it over, you can reply, “but it’s *mine*.” You are citing your unwaived right against yourself that you not take out your kidney. This is just as effective as citing a stranger’s unwaived right to defend your choice not to steal their kidney; you would say “but it’s *theirs*.”

This idea of moral defense is new to my argument; the Self-Constraint Argument never mentions it. That is why I think my argument fares better against certain quick objections, which we owe to Kagan. I will consider one such objection before moving on to what I take to be the really serious challenges to my derivation of prerogatives from finkish rights.

Impossibility

Kagan objects that rights against oneself can’t be prerogatives because they aren’t possible to violate:

[I]f the constraints upon which the self-constraint argument is supposed to operate are waivable—as the argument requires—then this is presumably because for such constraints the morally offensive feature that underlies violations of the constraint cannot be displayed in cases where the patient is a cooperating partner. In such cases, then, the constraints in question will not protect me from myself. They cannot, therefore, be used in any general way to yield options. The self-constraint argument fails. (Kagan 1989: 213)

The basic idea is that rights can only “protect” us from someone by making their actions wrong; a right’s strength consists in the deterrent possibility of violations. My rights aren’t prerogatives because they can’t make my actions wrong, and so they “will not protect me from myself.”

But my prerogatives don’t have to protect me from *my actions*—only from *morality’s demands*.

Rights against oneself can override the demand to be optimal, since they carry weight in moral defense. Unless I am of two minds, I can't sacrifice my life unwillingly. And yet, "I'm unwilling to give it up" is enough to justify, not just excuse, the choice to preserve a life that's mine to lead.

The key to solving this objection, as with the Wrongness Problem, is that prerogatives don't have to be restrictions on how we treat ourselves. Our finkish rights aren't wrong-making reasons that constrain deliberation, but we can still lean on them to defend our choices as permissible.¹⁹

So much for the easy objection. Now the real challenges.

*The Finkish Bomb*²⁰

Finkish rights aren't reasons. But we might still wonder why they should still get to count in moral defense. The answer isn't obvious, since we can't say that finkish factors *in general* get to count.

Consider an example from before. There is a nice treasure behind a bomb-rigged door; if active, the bomb will blow up anyone who enters. Normally that is a reason not to enter. But this is a smart bomb: when I am in range, it detects my presence and deactivates. This makes the bomb finkish; it is deactivated by the same thing that normally causes it to explode.

Now suppose you come along demanding that I go collect this treasure. "It's nifty—go get it!" Maybe there are some things I could say to rebuff your demand. But I can't say, "There's a bomb!"—at least, not if we are certain that the bomb won't explode on me. The bomb only matters given a threat of explosion. I am just confused if I defend myself by citing the finkish bomb. You could insist, "But the bomb won't explode on you; if you go near, it deactivates." It would be foolish for me to reply that the bomb is active *now*.

¹⁹ Kagan has two others objections that rest on the idea that rights can only make a difference by making things wrong; one is a dilemma about self-consent (1989: 212–13), and the other has to do with fragmented agents (1989: 213–14).

²⁰ I owe this superb objection to Kevin Dorst and Oli Rawle.

Here is the hard question. If unwaived finkish rights get to count in defense, why shouldn't active finkish bombs? Why don't I have a prerogative not to collect the treasure?

The difference, I think, is that the presence of a bomb is never in itself a reason. Bombs only matter because *they might explode*. That a certain bomb would blow me up, if approached, is a fact about the outcome of my actions. Since explosions are bad, I have an outcome-based reason not to approach the bomb. I call such forward-looking, outcome-based reasons *telic reasons* (Muñoz 2018: 262). Telic reasons are the bread and butter of consequentialism: throwing you on the tracks *would reduce death*; framing this person *would prevent a riot*; testing products on animals *would lead to suffering*—etc.

Deontology's meat and potatoes, meanwhile, come from the idea of a *responsive reason*: a reason based in the situation rather than outcomes (Muñoz 2018: 262–63). Paradigm examples include the fact that *I made a promise*, or that *they have a right against me that I not take their kidney*. These facts belong to the situation because they concern how things are given to the agent at the moment of deliberation; they are not outcomes that ensue depending on what is chosen. The promise *itself* counts against breaking it; the right *itself* counts against taking the kidney. It is not just that rights violations and broken promises are bad effects. Rights and promises matter in themselves.

Now here is the main point. If my way is blocked by a finkish bomb, there is no telic truth whatsoever that counts against going through the door. It is *false* that going through would cause an explosion. This makes the bomb's presence simply irrelevant. But in the case of your kidney, your finkish right *does* in a sense count against your taking it out. The right's presence is a fact about the situation that bears directly on your choice. The right can't be a (responsive) reason, since it's unstable. But it is at least true that the right is there, and this fact is in itself significant.

That's my solution to the finkish bomb problem. I think it's fairly principled, since the

telic/responsive distinction is independently motivated.²¹ But this solution does require us to think of rights as responsive rather than telic, which is incompatible with consequentialism. As a result, consequentialists can't use my argument to derive prerogatives from finkish rights, even if they happen to believe in rights. Here I have in mind "consequentializers," like Portmore (2011) and Setiya (2018), who think that rights matter only because violations are an undesirable outcome. Finkish rights cannot give rise to violations. So for the consequentializer, citing a finkish right in defense would be just as confused as citing the finkish bomb. Only the deontologist, so far as I can tell, is able to derive prerogatives from finkish rights against oneself. Finkish rights can't be violated, but they still intrinsically matter: if we don't waive them, they still count in defense.

Required to Waive

We are not out of the woods yet. Our final problem is that some unwaived rights don't seem to count in defense. Sometimes, we are *required to waive* our rights, and leaning on them is impermissible. I don't just mean that, in some cases, our rights are outweighed by vastly greater goods. (If a sample of my blood will cure cancer, I have to waive my rights and donate.) I have in mind cases where the right *would* be able to outweigh the greater good, but it would be wrong to lean on the right, anyway.

Consider an example. Suppose that I have promised Frieda, seriously and in light of the facts, to donate blood in case she needs a transfusion during next week's surgery. I show up on the big day; the nurse asks if I am ready to give. Don't I have to do it? Presumably, yes. Even though I retain my body rights (the nurse may not draw my blood without consent), it would be wrong to insist on these rights after promising not to. My rights are there granting protection, but invoking

²¹ The telic/responsive distinction, in some form or other, is familiar in action theory, moral philosophy, and epistemology. See e.g. Broad (1930) on fittingness vs. utility, Raz (2011: 46) on adaptive vs. practical reasons, and Müller (2011) on backward-looking vs. forward-looking reasons.

that protection is wrong.

Now we can see how it *sometimes* might wrong to lean on rights and forsake the greater good. A natural question is: why not always? Why is it wrong for me to suboptimally lean on my rights in the blood case, but permissible for you to lean on your rights when I demand that you donate your kidney?

The first thing to say is that these cases are clearly different, because there is a special reason why I may not invoke my rights in the blood case; I have promised not to do so. There is no such reason in normal cases of self-sacrifice, like the kidney case. We assumed that you didn't promise anyone the kidney (and that the recipient isn't your brother who donated his bone marrow to you last week). The only reason why you would have to waive your rights and donate is that it's for the greater good.

Alas, the problem isn't solved yet. Even if there is no special reason against keeping your rights, there is still a very strong reason: it's for the greater good! The choice to lean on your rights, like the choice to keep your kidney, is morally suboptimal. So why doesn't that *by itself* entail you have to waive?

Presumably, you would need a prerogative not to waive your right. This isn't just a "first-order" right against yourself that you keep your kidney. It would have to be a "meta-right." Specifically: a right against yourself that you keep your *right* over your kidney. This would make it permissible not to waive your first-order right even for the greater good. But of course, even a meta-right won't help if we are required to waive it, too, so we will also need meta-meta-rights, along with meta-meta-meta-rights, etc. Only then will we be able to permissibly lean on our rights and keep our kidneys.

This sounds a bit extravagant, I admit. But it's not quite as odd as it might seem. It's just a bit recursive: by default, for any right we have, we also have rights (against everyone) that we not

lose it. Still weird, but also better than the alternative: that all rights *must* be surrendered whenever they impede the greater good, and that it is always wrong to say “It’s *mine*” rather than consenting to donation.

That’s my response to the “required to waive” objection. No doubt, it’s a good objection, since it forces us to invoke meta-rights, which aren’t independently compelling. (Meta-rights aren’t as intuitive as the idea of moral defense, Stability, or the telic/responsive distinction.)²² This makes life harder for the deontologist: deriving prerogatives from rights is even trickier than we might have thought.

8. Conclusion

I have argued that prerogatives can be derived from waivable rights against oneself: one may cite these rights to defend one’s conduct as permissible, but they are not moral reasons that restrict our choices. Why aren’t they reasons? Because they are finkish—waived by the same decisions that would normally lead to violations—which makes them unstable. And yet even finkish rights can offer a kind of protection, since they may still be cited in moral defense. “The kidney is mine” doesn’t forbid donation, but it does block the demand to give up one’s body parts for the greater good.

This line of thought replaces Kagan’s Self-Constraint Argument, which fails because it assumes that our unwaived rights make self-sacrifice wrong—even though it’s optional, by

²² Is there any evidence for or against meta-rights? (Besides the fact that they sound funny?) The test case will be one where someone is deprived of rights without suffering any other damages; given meta-rights, we expect that even this person would be owed compensation and justification. Well, suppose the state seizes my bike, but kindly leaves the bike unharmed and lets me ride it whenever I want (until they change their mind). The state hasn’t infringed my first-order right that the bike not be damaged. But aren’t I still owed compensation? (I can no longer sell the bike, claim compensation when others damage it, etc.) And doesn’t the state owe me some explanation? (Arbitrary seizure is unjust.) If so, that is evidence that the state has infringed my right not to lose rights to my bike—a meta-right!

hypothesis. The big bad assumption here is that rights against oneself can only make a difference if they are wrong-making reasons. These rights should instead be seen as purely permissive. We can derive prerogatives from rights if we go beyond a theory with reasons and restrictions alone. It is only by examining the distinctive practice of moral defense—in which we justify ourselves to the community, rather than aiming at our best options—that we will uncover the contribution of our finkish rights.

At last, we have an answer our big question. How could prerogatives and restrictions share a source? My answer is that restrictions come from rights we can't waive, and prerogatives come from waivable rights against ourselves.

It must be admitted, however, that this view can be reasonably resisted. First, the Self-Other Symmetry itself is extremely controversial; I don't pretend to have given airtight arguments for rights against oneself. Second, even granting these rights, they can't be prerogatives if we always have to waive them for the greater good. The only block on a requirement to waive, apparently, is a recursive stack of meta-rights against oneself. That we have such rights is hardly obvious.

My conclusion is that the deontologist's dilemma is still painfully open. On the one hand, prerogatives and restrictions ought to share a source; we should *want* deontology to be unified by the concept of a right. But I have argued that there are decisive objections to deriving prerogatives from ordinary kinds of rights, and even if (meta-)rights against oneself can ground prerogatives, they are far from established fact. We are left with a sharpened question for future work. Should we leave deontology disunified, or should we try our hand at defending the Self-Other Symmetry?

Dilemmas are a disappointing way to end, but this one comes with a glimmer of hope. Deontological ethics doesn't have to be a hodgepodge; though it may never be as simple as consequentialism, it can be elegantly unified if we can make sense of the Self-Other Symmetry—if we can make sense of rights against oneself.

Acknowledgements

For written comments, my sincere thanks go to Kieran Setiya and Caspar Hare (as always), Nathaniel Baron-Schmitt, Quinn White, Joe Bowen, Brendan de Kenessey, Brad Skow, Alex Byrne, Peter Vallentyne, Sam Dishaw, Aleksy Tarasenko-Struc, Ryan Preston-Roedder, David Balcarras, Judy Thomson, Thomas Byrne, Julia Driver, Theron Pummer, Kelly Gaus, Oli Rawle, and my anonymous referees, most recently at *Philosophy and Phenomenological Research*. I also wish to thank Roger Wu for discussion. This paper is dedicated, with gratitude and admiration, to Tamar Schapiro, who introduced me to the realm of prerogatives (via the early modern distinction between “counsel” and “command”), and who helped me through the long months when this project was on top of me instead of the other way around.

References

- Anscombe, G.E.M. (1967). "Who is Wronged? Philippa Foot on Double Effect: One Point," in *The Oxford Review* 5: 16–17.
- Benn, Claire (2017). "Supererogatory Spandrels," in *Ethics & Politics* 19 (1): 269–290.
- Bolinger, Renee Jorgensen (2017). "Revisiting the Right to Do Wrong," in *The Australasian Journal of Philosophy* 95 (1): 43–57.
- Broad, C.D. (1930). *Five Types of Ethical Theory*. London: Routledge and Keegan Paul.
- Cohen, G.A. (1996). "Reason, Humanity, and the Moral Law," in Korsgaard 1996: 167–188.
- Enoch, David (2002). "A Right to Violate One's Duty," in *Law and Philosophy* 21 (4): 355–384.
- Fruh, Kyle (2014). "The Power to Promise Oneself," in *The Southern Journal of Philosophy* 52 (1): 61–85.
- Gert, Joshua (2007). "Normative Strength and the Balance of Reasons," in *Philosophical Review* 116 (4): 533–562.
- Gilbert, Margaret (2018). *Rights and Demands: A Foundational Inquiry*. Oxford: Oxford University Press.
- Hare, Caspar and Hedden, Brian (2016). "Self-Reinforcing and Self-Frustrating Decisions," in *Noûs* 50 (3): 604–628.
- Herstein, Ori J. (2012). "Defending the Right to Do Wrong," in *Law and Philosophy* 31 (3): 343–365.
- Hohfeld, Wesley Newcomb (1919). *Fundamental Legal Conceptions*. New Haven: Yale University Press.
- Hooker, Brad (2000). *Ideal Code, Real World: A Rule-Consequentialist Theory of Morality*. Oxford: Oxford University Press.
- Hurka, Thomas and Shubert, Esther (2012). "Permissions to Do Less Than Best: A Moving Band," *Oxford Studies in Normative Ethics, Volume II*: 1–27.
- Hurley, Paul (1995). "Getting Our Options Clear: A Closer Look at Agent-Centered Options," in

- Philosophical Studies* 78: 163–188.
- Kagan, Shelly (1989). *The Limits of Morality*. Oxford: Oxford University Press.
- Kamm, Frances Myrna (1992). “Non-Consequentialism, the Person as an End-in-Itself, and the Significance of Status,” in *Philosophy and Public Affairs* 21 (4): 354–389.
- (1996). *Morality, Mortality Volume II: Rights, Duties, and Status*. Oxford: Oxford University Press.
- (2007). *Intricate Ethics: Rights, Responsibilities, and Permissible Harm*. Oxford: Oxford University Press.
- Korsgaard, Christine M. (1996). *The Sources of Normativity*. Cambridge: Cambridge University Press.
- Lazar, Seth (2018). “Accommodating Options,” in *Pacific Philosophical Quarterly* 100: 233–255.
- Lewis, David (1997). “Finkish Dispositions,” in *The Philosophical Quarterly* 47 (187): 143–158.
- Liberto, Hallie Rose (2012). “Denying the Suberogatory,” in *Philosophia* 40: 395–402.
- Marcus, Ruth Barcan (1980). “Moral Dilemmas and Consistency,” in *The Journal of Philosophy* 77 (3): 121–136.
- Martin, C. (1994). “Dispositions and Conditionals,” in *The Philosophical Quarterly* 44 (174): 1–8.
- McMahan, Jeff (1981). “Problems of Population Theory,” in *Ethics* 92: 96–127.
- Müller, Anselm Wilfried (2011). “Backward-looking Rationality and the Unity of Practical Reason,” in Anton Ford, Jennifer Hornsby, and Frederick Stoutland (eds.), *Essays on Anscombe’s Intention*. Cambridge: Harvard University Press: 242–269.
- Muñoz, Daniel (2018). “Thinking, Acting, Considering,” in *Australasian Journal of Philosophy* 96 (2): 255–270.
- (forthcoming). “The Paradox of Duties to Oneself,” in *Australasian Journal of Philosophy*.
- Nagel, Thomas (1970). *The Possibility of Altruism*. Princeton: Princeton University Press.
- O’Neill, Onora (2001). “Duty and Obligation,” in Lawrence C. Becker and Charlotte B. Becker (eds.), *Encyclopedia of Ethics, Second Edition*. Routledge Press: 423–428.

- Owens, David (2012). *Shaping the Normative Landscape*. Oxford: Oxford University Press.
- Parfit, Derek (1984). *Reasons and Persons*. Oxford: Oxford University Press.
- Portmore, Douglas (2011). *Commonsense Consequentialism: Wherein Morality Meets Rationality*. Oxford: Oxford University Press.
- Raz, Joseph (2011). *From Normativity to Responsibility*. Oxford: Oxford University Press.
- Rosati, Connie (2011). “The Importance of Self-Promises,” in Hanoch Sheinman (ed.), *Promises and Agreements: Philosophical Essays*. Oxford: Oxford University Press: 124–155.
- Scanlon, Thomas (1998). *What We Owe to Each Other*. Cambridge: Harvard University Press.
- Schaab, Janis David (2020). “On the Supposed Incoherence of Obligations to Oneself,” in *Australasian Journal of Philosophy*.
- Scheffler, Samuel (1994). *The Rejection of Consequentialism: A Philosophical Investigation of the Considerations Underlying Rival Moral Conceptions*. Revised Edition. Oxford: Oxford University Press.
- Setiya, Kieran (2014). “What is a Reason to Act?” in *Philosophical Studies* 167 (2): 221–235.
- (2018). “Must Consequentialists Kill?” in *The Journal of Philosophy* 115 (2): 92–105.
- Singer, Marcus G. (1959). “On Duties to Oneself,” in *Ethics* 69 (3): 202–205.
- Slote, Michael (1984a). “Satisficing Consequentialism,” in *Proceedings of the Aristotelian Society* 58: 139–163.
- (1984b). “Morality and Self-Other Asymmetry,” in *The Journal of Philosophy* 81 (4): 179–192.
- Stocker, Michael (1976). “Agent and Other: Against Ethical Universalism,” in *Australasian Journal of Philosophy* 54 (3): 206–220.
- Thomson, Judith Jarvis (1990). *The Realm of Rights*. Cambridge: Harvard University Press.
- Waldron, Jeremy (1981). “A Right to Do Wrong,” in *Ethics* 92 (1): 21–39.
- Wedgwood, Ralph (2013). “The Weight of Moral Reasons,” in Mark Timmons (ed.), *Oxford Studies in Normative Ethics*, vol. 3: 35–58.

Wertheimer, Alan (1996). *Exploitation*. Princeton: Princeton University Press.