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The Common Structure of Thresholds for Rights and Thresholds for Options

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Two features are said to characterize commonsense morality: rights and options. We can think about these features as responses to two of the ways in which consequentialist ethics is said to go wrong—consequentialism goes wrong in allowing some actions which ought to be forbidden and requiring other actions which ought to be merely permissible.

Rights impose constraints on the behavior of moral agents and protect those who have them from certain actions. Suppose that we can bring about some good by taking Fred's car (say by borrowing it to drive an elderly friend to the mall) and Fred has a property right in his car. We may not take Fred's car without his permission even though the act of taking Fred's car would best promote the good. The existence of rights means that moral agents are sometimes forbidden from performing the action that would bring about the most good overall. Thus, rights bar us from promoting the good in some cases.

Options have a different effect. Options are that feature of commonsense morality that gives us a break from promoting the good.¹ Even if it would be nice of me to offer drives to the mall to elderly strangers, I need not always do so even though that course of action might better promote the good than the course of action I had otherwise planned. Of course, not just any plan of mine is morally permissible. I cannot spend the afternoon running down elderly strangers rather than driving them to the mall. Given the existence of rights or constraints, that course of action is morally forbidden. This demonstrates a connection between options and rights. A moral theory that includes options needs an account of rights or constraints if it is not to offend the

most basic of our shared intuitions about morality's demands.

Before I begin I need to clarify how options relate to rights. Rights and options are connected in several ways, some of which are more interesting than others. Any moral theory which includes rights, or other forms of deontological constraints, will include options automatically because at least in circumstances which involve rights, agents will be forbidden from bringing about the most good, if that action involves the infringing of a right and there is not enough at stake to override the right. If an agent is *forbidden* from bringing about the most good, it is trivially true that s/he is *permitted* not to bring about the most good. Hence, rights entail options. Of course, the more interesting question concerns the relationship between rights and options concerns options other than those associated with rights. My focus in this paper is on options not to bring about the most good. Let me say just a few words about the kind of options I will be talking about. I will begin with an example. I could at this very moment stop working on my paper to go and help some students who are working on theirs. I could also continue with my own work. Suppose that all of my professional obligations to my students have been met. Both plans bring about some good but if we assume that I do more good helping the students-- if this seems implausible suppose it is a large group of highly motivated students--most of us still do not think I do anything morally wrong by continuing to work on my own paper even though that brings about less good overall. In this case we want to say that the non-maximizing plan is permitted. I have the option to act on either of these plans. But options of this sort are not limitless. I could not, for example, continue working on my paper while a student stands at my door choking to death on a piece of food.

This paper will assume that both rights and options have thresholds. That is to say, I

assume rights and options are not absolute. The threshold of a right or an option is the point at which it can be justifiably overridden. If we think that the moral theory which best captures commonsense morality is a version of deontological ethics, the moral theory to which this paper stands to make a contribution is moderate deontology in that the rights and options it contains are moderate versions of rights and options. The question on which it will focus is whether thresholds for rights and thresholds for options share a common structure. I do not ask here whether the thresholds for rights and options differ in size, in terms of the total amount which must be at stake to justify infringing them. In fact, it is my view that rights thresholds are higher than options thresholds—thus even when they protect a good of the same size, I think it takes more good at stake to justify infringing a right than it does to outweigh an option—but that is the subject of a different paper.²

Part 1 of this paper will explain what thresholds mean in the context of rights and options and say a little bit to motivate the idea that rights and options have thresholds. Part 2 will give an account of the structure of thresholds for rights. Part 3 explores the question of whether thresholds for options share a common structure with thresholds for rights. During the course of this exploration I discuss T.M. Scanlon's work on obligation found in his book *What We Owe to Each Other*.³ And finally in part 4 I raise the issue of whether differences in the structure of threshold for rights and options are best accounted for the different role considerations of autonomy and welfare play in grounding these features of commonsense morality.

PART 1: Thresholds for Rights and Options

I think it is a feature of commonsense morality that rights and options are not absolute. In the case of rights, I think that most of us believe both that rights exist but that there are

circumstances in which a right can justifiably be infringed. One such circumstance is when there is a significant amount of good which can only be brought about by the infringement of a right. Thus, for example, we believe that we would be morally permitted to take Fred's car (without his permission and/or against his will) if doing so is the only way to save a life even though Fred's property rights normally make the act of taking his car morally forbidden. In the case of options, I think that most of us believe that we need not always act so as to bring about the most good but that if enough good is at stake our option gives out. Thus, for example, we believe that I ought to let others use my car if doing so is the only way to save a life even though I usually have the option of keeping my car for my own purposes.

One way to talk about the non-absoluteness of rights and options is in terms of thresholds. Rights have thresholds if they can be overridden on the basis of what is at stake for those who will benefit from the rights infringement.⁴ In all the cases I consider in this paper what we are asking is whether some moral agent A can infringe B's right on the basis of what is at stake for C or some group of Cs.⁵ Thresholds can be either high or low, or somewhere in between. A right has a high threshold, I will say, if it would take a great deal of benefit to those who would benefit from the right's infringement to justify infringing it. If a right has a low threshold, then very little need be at stake to justify infringing it. What it means for an option to have a threshold is for that option not to be unlimited. When a great deal is at stake for others, the option not to promote the good gives way, and a moral agent may be required to come to the aid of others. If options have low thresholds, then the obligation to aid will apply when the good I can do for others is quite small. Morality will still be very demanding. If options have very high thresholds, then the obligation to aid will only come to bear when a great deal is at stake for those I could

help.⁶

This account of thresholds for options and thresholds for rights talks so far only about their size. We have been comparing the total amount that must be at stake before options and rights are overridden. Call the total amount that must be at stake before a right or an option is overridden the total requirement. Is the total requirement all that matters? Elsewhere I have argued that it is not in the case of rights. In the case of rights, thresholds also have a distributive structure. The total amount at stake must be distributed in certain ways for the threshold to be met. I will begin by talking about the structure of rights in terms of the total requirement and then go on to explain why that is not enough and what else might be required.

PART 2: The Structure of Thresholds for Rights

What must be the case before a right is overridden? We can start by noting that the amount at stake for those who will benefit from the right's infringement must be significantly larger than the amount at stake for the right bearer. The size of the total requirement will depend then on how much the right bearer will be harmed by the infringement of his right. Thus, if it is only my right not to have my pen taken without my permission that is at issue, relatively little must be at stake to justify overriding the right. If it is my right not to have my house used for two weeks in the middle of winter, then more must be at stake and still more must be at stake if it is my right not to have my foot chopped off that is up for consideration. The basic idea then is this: The total requirement is a function of how much is at stake for the right bearer.⁷ When this total amount is at stake for those who stand to benefit from the right's infringement, then we can say that the total requirement has been met. The total requirement cannot be the whole story about justifying the infringing of rights however. If it were the case that a right's threshold was only made up of

a total requirement, then some rights which are usually thought to be very strong, near absolute even, could be overridden if some small amount were at stake for a large enough number of beneficiaries of the right's infringement. The intuition that some rights, namely those that protect very important things, ought not to be subject to trade-offs with large numbers of very small benefits has been dubbed the "no-lives for headaches" intuition. According to the "no lives for headaches" intuition there is no number of headaches the alleviating of which would justify infringing a right not be killed. Yet, if the total requirement were the only component of a right's threshold, then there would be in theory some number of headaches, the alleviating of which, would justify infringing a right not be killed. Thus, if we share the "no-lives for headaches" intuition, then we ought to recognize that the total requirement cannot be the only component of a right's threshold. There must be more to the structure of thresholds for rights. What other elements might make up the threshold?

Judith Thomson suggests that we add a distributive constraint to the total required to override a right.⁸ On her view of thresholds for rights, it is not just that there must be a certain amount at stake before a right is overridden. According to Thomson, the amount that would justify infringing a right must be distributed in a particular way: it must all be at stake for a single individual. The existence of this distributive constraint explains why we think some rights are absolute. Thomson thinks that some rights, such as the right not to be killed, are maximally stringent. Maximal stringency means that the conditions which would justify the infringing of certain rights can never, in practical terms, be met.⁹ The maximal stringency of the right not to be killed, for example, follows from the two ideas that make up Thomson's High Threshold Thesis. First, a great deal more must be at stake for those who will benefit from a right's

infringement then is at stake for the right bearer (Thomson's total requirement). Second, that total must be at stake for a single individual (Thomson's distributive constraint).

It is my view that Thomson's position is overly restrictive though I am sympathetic to the "no lives for headaches" intuition behind it. Paying attention to the right bearer's point of view fuels the idea that no matter how many people will benefit, no number of headaches relieved is enough to justify infringing someone's right not to be killed. My suggestion is that Thomson's distributive constraint is an unnecessarily strong response to this problem. In its place I have proposed two constraints: an *existential constraint* (there must be at least one person among the beneficiaries of the rights infringement who has as much at stake as the right bearer) and a *universal constraint* (each person who stands to benefit, if the amount he or she will benefit is to count towards the total requirement, must have a certain minimum amount at stake.) Like Thomson's High Threshold thesis, my account of thresholds for rights says that no number of headaches at stake could justify infringing a right not to be killed. But my account reaches this conclusion for a different reason: headaches (when compared to the life being protected by a right) are too small to even count. Headaches fail to meet even the universal constraint. They are morally irrelevant. Unlike Thomson's High Threshold thesis, my account of thresholds for rights says that some number of people having limbs at stake plus at least one person with a life at stake, could override the right not to be killed. That is because my existential constraint says only that there must be *at least one person* among those who stand to benefit from the right's infringement with as much at stake as the right bearer stands to lose were the right infringed. As well, the right total amount must be at stake for the total requirement to be met. My account of thresholds for rights does not require that the entire total be at stake for a single individual.

Now some will prefer Thomson's very strong version of the distributive constraint. Others may think that my constraint is still too strong. Perhaps the amount that must be at stake for a single individual among the beneficiaries should be at least half as much as is at stake for the right bearer. This would be a much weaker version of my existential constraint. This debate over the strength of the distributive constraint is familiar for those who have turned their attention to moderate deontology and non-absolute accounts of rights. I will not pursue it in more detail here since the focus of this paper is not settling which version of threshold for rights is correct. Rather, the focus of this paper is the comparison between the structure of thresholds for rights and the structure of thresholds for options. Just note that both versions of moderate deontology—Thomson's and my own—agree that more matters than just the total amount at stake. To override a right the total must be structured in a certain way. The total is subject to a distributive constraint. Is that true also in the case of options?

PART 3: Do thresholds for options share the structure of thresholds of rights?

As with rights, let us begin thinking about options purely in terms of the total requirement. I am not required to maximize the good, according to both commonsense morality and moderate deontology. But neither can I, in all circumstances, ignore the good of others in favor of my own good. A moral agent's option to do what s/he wants, rather than to promote the good, is not absolute. In the face of others' great needs, it is not morally permissible to simply choose instead to pursue some minor interest of my own. We can think of this intuition as the "one shouldn't fiddle while Rome burns" intuition. As with rights, there is some total amount of good at stake for others which were it at issue would outweigh my option to do what I choose. As with rights, this amount is comparative, balancing what is at stake for me against the good of

others. Thus, if all it would cost me to address the need of another is \$5 or five minutes of my time, then an option is relatively easily outweighed by the needs of others. But if my career choice, marital plans, or life's fortune hangs the balance, a great deal must be at stake for others before my option's threshold is met. Samuel Scheffler, in defending options, or as he calls them "prerogatives" describes them as giving extra weight to one's own interests within a broadly consequentialist framework. He writes that "in arriving at a satisfactory formulation of such a prerogative, one question that would obviously have to be faced is the question of *how much* greater weight the agent may give his own interests than to the interests of other people."¹⁰

Let us suppose though that we could figure out how much more must be at stake for others before an option is outweighed. We could suppose, for the purposes of discussion, that we calculate the total required before an option is overridden by multiplying what is at stake for the option holder by 10. Now we can move to ask whether the total requirement is all there is to an option's structure (as Scheffler's formulation seems to assume it is).

Do thresholds for options also include distributive constraints on aggregation or is the total requirement all that matters in the case of options? Are the intuitions behind the structure of thresholds for rights also applicable in the case of obligations to aid? Let us begin with the universal constraint and see if anything like it can be found in the realm of options. Recall that in the case of rights the universal constraint said that for each person who stands to benefit from the infringing of a right, if what s/he has at stake is to count towards overriding a right, s/he must have a certain minimum amount at stake. So in the case of options what we need to know is whether there is a minimum amount at stake each beneficiary of aid needs to have, if what they have at stake is to count towards overriding the option of a person who is posed to provide the

aid.

On the face of it, it seems to me that there is a minimum amount which each beneficiary must have at stake if their collective good is to generate an obligation (and override an option). It would be nice of me to rake my neighbor's patch of front grass, in addition to my own, but I think I am morally free not to, even if this neighborly act would take very little effort on my part. Likewise, I think I am morally permitted to keep a painting in my house even if a colleague would appreciate it more and I think I am morally permitted to walk by a gourmet panhandler who asks me to upgrade his domestic wine to something from the Vintages Wine Boutique. Now it might just be that in these cases the total at stake is not large enough to override my option. But I think more is going on than this. Very small amounts of good, it seems to me, are irrelevant where obligation is concerned. No matter how many of them there are, I do not think they ever start to add up to the stuff of which obligation is made. I do not think the situation gets more morally pressing if there are many neighbors wanting lawns raked or many panhandlers wishing to drink a better brand of wine.

Frances Kamm makes this same point, in terms of choice situations, using the language of irrelevant utilities.¹¹ Kamm's case involves a redirecting a threat— a hurtling trolley which if left to its own devices, would kill 5 people lying on the tracks. Suppose we could turn the trolley away from the 5 and on to another of two tracks on which lie Joe and Jim respectively. Kamm writes "But suppose that alongside Jim, but not Joe, there grows a patch of beautiful flowers which gives pleasure to a great many people and these flowers would be destroyed by a threat redirected toward Jim." While sending the threat toward Joe would maximize utility, Kamm thinks it would be wrong to do so on the basis of the extra utility from the flowers. As far as Joe

and Jim's lives are concerned, the flowers are an irrelevant utility. Morally speaking, their presence makes no difference. Kamm thinks the same analysis applies in a case in which we could distribute some medical benefit in such a way as it to either save a life or save 1 life and cure a sore throat. In this case the sore throat is the irrelevant utility. Deciding on the basis of the sore throat or the flowers beside the track seems morally worse than flipping a coin, she thinks. Kamm recommends a random decision procedure which at least has the virtue of admitting that moral considerations have run out. I am inclined to think that something like Kamm's principle of irrelevant utilities is true in the case of what needs to be at stake to override options. To continue with the flowers example, it would be good of me to stop by the side of the road on the way home and pick flowers for all of my neighbors. But no matter how many people this random act of kindness would make happy, I do not think I am obligated to pick or to share the flowers.¹²

Do other moral theorists who think that there are both obligations to promote the good and options which say we need not always do so agree with me about this structural feature of thresholds for options? Now in a way it is hard to say. For while I think most moral theorists think that the right moral theory has these features, these features are rarely presented with the kind of details and precision one might like. But there is at least one example of a contrary view.

In his recent book *What We Ow To Each Other*, T.M. Scanlon presents his general account of obligations and argues that two principles of aid would pass his test of it not being reasonable to reject them. These are the Principle of Helpfulness and the Rescue Principle. The Principle of Helpfulness says that we are required to aid others when we can do so at no great cost to ourselves. (I will discuss the rescue principle in the context of the other distributive constraint, the existential constraint.) The example he gives is one in which the moral agent has a

piece of information that he has no reason to withhold, and which he knows will help another person. According to Scanlon: “It would be unreasonable to reject a principle requiring us to help others in this way (even when they are not in desperate need), since such a principle would involve no significant sacrifice on our part.”¹³ I find Scanlon’s work difficult to deal with in a way because of its lack of details about cases. It matters to me, for instance, whether the information is the kind of intelligence such as a military secret where my action stands to help end a war and save lives or whether it would just make the person’s life go better by improving her day. In the latter case I might consider whether to help a slightly befuddled person on campus find his way to the building he is looking for. But let us assume for now that the benefit is relatively minor as is implied by the language of “helpfulness.”

Scanlon’s view is of interest because it seems that on his view there is no such minimum amount which others must have at stake if what they have at stake is to sum towards overriding my option not to promote the good. Further, Scanlon’s view is not a utilitarian one. He writes that it would be reasonable to reject a principle that required us “in every decision we make, to give no more weight to our own interests than to the similar interests of others.” (p. 224)

Is Scanlon right that very small benefits to others can generate obligations if there is no great cost to oneself? His claim is that it would not be reasonable to reject such a principle. We would then disagree with Scanlon at two levels. First, we might disagree about whether “Could one reasonably reject a given principle?” is the right standard for normative ethics. Second, we might disagree about whether one could reasonably reject the helpfulness principle. My own view is that one could reasonably reject the requirement of helpfulness. It does not seem too dismissive of the needs of others given that the others may only stand to gain a small amount.

What about the existential constraint? Does this also apply in the case of thresholds for options? Is there is a requirement that at least one of those who will benefit from the overriding of an option has as much at stake as the option bearer? It seems to me that the intuitions appealed to in the discussion of rights thresholds are relevant here as well. If I am obligated to give away my resources, then in addition to there being a total amount of good that will come about it seems there must be someone who will benefit from my sacrifice who has as much at stake as me. This is true even if the total is made up by aggregating the amount individual beneficiaries have at stake and each beneficiary has enough at stake to meet the universal constraint. If the relevant intuition in the case of the universal constraint, was “no lives for headaches,” the relevant intuition in the case of the existential constraint must set the bar significantly higher. That is, in the case of the existential constraint it seems there is an equivalent to the no-lives-for-headaches intuition. Call it the “no lives for arms” intuition. It says that I should not have to give up my life to save some large number of people losing their arms yet this would be the result if thresholds for options were made up only of a total requirement plus a universal constraint.

Consider the following case: Suppose that a moral agent, Jane, is the owner of a vial of medicine which would cure Jane of a fatal disease if she drank the entire dose and that without the medicine she is sure to die. If the same medicine could cure a sufficiently large number of people of a disease which will cause them to lose their arms (perhaps a million people and all their offspring and descendants), then it seems as if the universal constraint and the option’s total requirement would both be met. If there were only a universal constraint and a total requirement, then the threshold condition would be met and Jane ought to give the vial away even though this course of action would result in her death. This seems wrong. Further, it seems wrong to me not

because the result is that Jane is obligated to give up her life for the good of others. Sometimes I think morality requires that we make great sacrifices, even the sacrifice of one's own life. What seems wrong in this case is the comparison between what the beneficiaries have at stake and what Jane has at stake. When we compare Jane with the worst off of the others who stand to lose their arms, we see that Jane is being asked to give up something of more value. My intuition is that this ought to make a moral difference.¹⁴

This intuition, on the limits of sacrifice, is not only held by moderate deontologists. The idea that considerations of the good count sometimes but not others is part of a general anti-aggregationist appeal in ethics. Interestingly, some consequentialists feel its pull as well. Thus, when Peter Singer appeals to a "comparable worth" principle in "Famine, Affluence, and Morality" he too is suggesting that there are times when we need not give up our resources even if we could bring about more good by doing so. Recall that Singer uses this principle as a way of answering the question, "How much do I need to give?" His response is that we need to sacrifice our own goods until the point at which we had something of comparable worth at stake. Singer's principle says "if it is in our power to prevent something bad from happening, without thereby sacrificing anything of comparable moral importance, we ought, morally, to do it." Pointing out that this principle is not particularly controversial, Singer writes that "It requires us only to prevent what is bad, and to promote what is good, and it requires this of us only when we can do it without sacrificing anything that is, from the moral point of view, comparably important." To the extent that this would not in any circumstances license sacrificing my own life to save some number of others from mere headaches no matter how great the number, Singer's principle is a deviation from straightforward utilitarianism. Indeed, it is likely given the difference between

what one's income buys here versus what it buys in other parts of the world, that faced with a choice of giving up my last dollar to save my own life or sending it away to help distant others, Singer's principle would have me save my own life even if it is balanced against 10 lives of distant others. This result follows because the comparable worth principle also works as a bar against aggregation in ethics. Now Singer's view in "Famine, Affluence, and Morality" is otherwise a maximizing one. The only element to his option is the distributive constraint but what is significant, I think, is that even utilitarians feel the pull of the anti-aggregation intuition when it comes to personal sacrifice. I think that options, like rights, have an existential constraint as part of their structure.¹⁵

Scanlon's rescue principle also seems to incorporate something like the existential constraint. His rescue principle says that if you are presented with a situation in which you can prevent something very bad from happening, or alleviate someone's dire plight, by making a slight (or even moderate) sacrifice, then it would be wrong not to do so."¹⁶ Now Scanlon's version of the existential constraint is stronger than the one I have proposed here since we are to compare a slight or moderate sacrifice on the part of the option holder to someone else's dire plight. Clearly a dire plight is worse than a moderate sacrifice. But if there is only one person who will benefit from the overriding of an option, then it will be that they need a fair amount at stake to satisfy the total requirement

Let us leave Scanlon aside then and consider a Scanlon-esque view according to which there is no requirement that there be one person among the beneficiaries with as much at stake as the option holder *provided the total is high enough*. This suggests an alternative structure for thresholds for options. I will present both possibilities and then say a few words to motivate the

inclusion of the Scanlon-esque alternative.

- a. An option is overridden when the total requirement is met (sufficiently much more is at stake for those who will benefit from the option's being overridden than is at stake for the option holder and that total is structured in accordance with the universal constraint—which specifies a minimum amount each beneficiary must have at stake if what they at stake is to count towards the total—and the existential constraint—which specifies that at least one of the beneficiaries must have at much at stake as the option holder. OR
- b. An option is overridden when the total requirement is met (a great deal is at stake for those who those who will benefit from the option's being overridden than is at stake for the option holder and that total is structured in accordance with the universal constraint—which specifies a minimum amount each beneficiary must have at stake if what they at stake is to count towards the total.

In the second option a great deal more must be at stake, there is a higher total requirement, but there is no existential constraint.

A third possibility is that the strength of the existential constraint varies with the total—with only a moderately high total amount at stake for the beneficiaries there must be one person among the beneficiaries with as much at stake as the option holder, with a very high total there must be one person among the beneficiaries with $\frac{1}{2}$ as much at stake as the option holder, and with an extremely high total amount at stake there is no existential constraint, the only minimum amount is the amount specified by the universal constraint.

What motivates the inclusion of the second possibility, or the sliding scale, is our willingness to be motivated by considerations of the greater good. I am not sure whether options are different from rights in this way but I can see some pull towards a view of this sort when I think about our capacities for altruistic behavior. I leave open the possibility that the structure of thresholds for rights and the structure of thresholds for options differs in terms of the existence and strength of the existential constraint.

ENDNOTES

¹ The options I am talking about are options *not to bring about the best outcome*. They are not options not to do what is morally required. We might make a distinction between options which are internal to morality's demands and options which are external to morality's demands. Call options of the first sort 'internal options' and options of the second sort 'external options.' Internal options are a part of the structure of moral requirements. What is optional is not doing what is right, but rather bringing about the most good. Thus, internal options tell us that morality does not always require us to act so as to bring about the best outcome. But in doing so they still tell us something about morality's requirements. External options get their grounding outside the domain of morality. For example, one might think that *morally speaking* one must always give aid to other persons but that moral reasons are not the only kind of reasons that matter. On this picture, self-interested reasons, aesthetic reasons, or perfectionist reasons can outweigh moral reasons. Thus, external options tell us that we need not always do what is morally required. In this sense external options are stronger than internal options since what is outweighed is not just a particular moral reason but moral reasons in general. The focus of this paper is the weaker sort of options, internal options, and all of the discussion in this paper takes place within the domain of moral reasons. Whether moral reasons can ever be outweighed by other kinds of reasons is a further question and is not the subject of this paper. For a defense of external options, see Susan Wolf's papers "Moral Saints," (*Journal of Philosophy* 79, 1982:419-439) and "Above and Below the Line of Duty," (*Philosophical Topics* 14, 1986: 131-48).

² See my “Moral Gaps and Moderate Deontology,” *Philosophical Perspectives*, 2009, 23 (1): 23-43.

³ Harvard University Press, 1998.

⁴ The justification of a right having threshold could be either external or internal. An external justification is pluralist in orientation. A right and the good that would be brought about by infringing it are two different sources of moral obligation. An account of thresholds must, on the external picture, tell us how to weigh these two competing obligations. It involves making trade-offs. An internal justification is monistic in orientation. A right and the good that would be brought about by come from the same source. An account of thresholds must, on the internal picture, tell us what common foundation shared by both the obligation not to infringe rights and the obligation not to promote the good. No trade-offs are involved. There are two familiar internalist accounts, one that finds the source of both rights and their justified infringing in human agency and the other that finds the source of both rights and their justified infringing in utility. But the focus of this paper is the structure of normative ethics, rather than its justification and so I leave this issue for another time.

⁵ In this, the standard case, I assume that moral agent A is a different person than the right bearer B, and that A and B are both different from C, the beneficiary. I also assume that A and B are both single individuals. I make these assumptions because it is possible that overlapping identities and larger numbers might make a moral difference. For example, it might be easier to override B’s right if B is also the person who benefits from the infringement than it would be if some third person C was the beneficiary. Likewise, it might be more difficult to

justify infringing B's right if B is part of a group of right bearers about to have his right overridden by A or some group of As. Although there are not three parties in the options case I will assume that the option holder and those who stand to benefit are separate individuals and that the option holder is a single person.

⁶ Another question I do not address here concerns whether there are other conditions which might be necessary for a right or an option to be overridden besides thresholds. For example, one might think that there are distributive principles governing our decisions of whose right to override. Certainly most people think that the right's infringement must be a necessary means to obtain the good for that infringement to be justified. It is not just enough that the right's infringement is one way to bring about the good. (Elsewhere I have called this the "no gratuitous infringements principle.") So there are other aspects to justifying a right's infringement: that the threshold is met is a necessary condition but it may not be sufficient. This might also be the case with options. For example, in the case of both rights and options it seems likely that there are significant issues regarding the distribution of overridings. Suppose that there is some amount X at stake which is enough to justify infringing both a's right or b's rights, but not both and we need only infringe one right. How do we decide whose right to infringe? I leave these issues aside for the purposes of this paper.

⁷ There may be factors other than *harm* which are relevant to this determination. Elsewhere I have argued that in the case of rights, autonomy matters as well although here considerations of harm are the only ones that I have raised. See my papers "How is the Strength of a Right

Determined?: Assessing the Harm View,” *American Philosophical Quarterly*, October 1995, 32 (4): 383-392 and “The Badness of Death, the Wrongness of Killing, and the Moral Importance of Autonomy,” *Dialogue*, Fall 2001, 40 (4): 723-728.

⁸ See Thomson’s *The Realm of Rights*, Harvard University Press, 1990, pp. 166-169 for a discussion of the distributive constraint and trade-offs.

⁹ Thomson does not address the issue of whether, and in what sort of circumstances, the conditions could be met. If there were an individual who would have sufficiently more at stake than another individual’s life, then presumably even the right not to be killed could be overridden. We might imagine a person with an increased sensitivity to pain and a much longer life span than the human norm who stands to endure a life-time of torture followed by painful death and ask whether that person’s suffering plus death is enough to meet the total. However, since we currently have no interactions with persons of this sort the conditions will not be met.

¹⁰Footnote 7, p. 21, *The Rejection of Consequentialism*, Clarendon Press, Oxford, 1982.

¹¹ “The Choice Between People: ‘Common Sense’ Morality, And Doctors,” Kamm, Frances M. *Bioethics*, JL 87; 1: 255-271.

¹² Now there are some difficulties when assessing our intuitions about these sorts of cases. Our judgments may be about good character rather than right action. I might be a nicer person if I perform small acts of goodness for others when I can do so at little cost to myself. I might have more friends. Maybe my neighbors will like me more. But these are different sorts of evaluations.

My only claim here is that I do nothing wrong if I do not. The distinction between right and virtue is an important one although there are, of course, important connections between virtue and right action as well. And I am not denying there are hard questions here. Surely someone who never helps his neighbors or sets out to make others happy may have a morally flawed character even though none of the acts are themselves wrong.

¹³ P. 224, *What We Owe Each Other*

¹⁴ For another attempt to accommodate this intuition in a broadly consequentialist framework, see Robert Noggle, "On the Cross of Mere Utility: Utilitarianism, Sacrifices, and the Value of Persons." *Utilitas*, March 2000, 12(1): 1-24.

¹⁵ Now some people think that there is something special about one's own life such that morality cannot require that one sacrifice one's own life to save the lives of others. This would account for our intuition in the case above but if it is the right explanation then we will not be able to distinguish between the case above and a similar one in which millions of people, other than Jane, will die if she does not give them the medicine and Jane stands to lose her own life if she does. So let us consider a slightly different sort of example. Suppose what is at stake is something both less significant and more familiar, Jane's time. In this case the choice that confronts Jane is between spending time with her family and maintaining those relationships or spending time helping neighbors with various home improvement projects. Assuming that we judge that maintaining relationships with one's children is more significant than home improvement projects, then I think it's true that no number of home improvement projects will ever generate an obligation that trumps Jane's option to spend time with her family.

¹⁶ p. 224, *What We Owe to Each Other*