

The Traces Left Behind: On Appropriate Responses to Right Acts with Wrong Features

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Abstract: Fulfilling one's all-things-considered duty sometimes requires violating pro tanto duties. According to W.D. Ross and Robert Nozick, the pro tanto-duty-violating, wrong-making features of acts in these cases can leave 'traces' of wrongfulness that require specific responses: feeling compunction for the wrongfulness and/or providing compensation to the negatively affected person. Failure to respond in the appropriate way to lingering wrong-making features can itself be wrongful. Unfortunately, criteria for determining when traces remain are largely lacking. In this piece, I argue for three necessary conditions for the existence of a trace: 'The Non-Consequentialist Duty Condition', 'The Identity Condition', and 'The Ratio Condition'.

Keywords: Traces; pro tanto duties; moderate deontology; threshold deontology; W.D. Ross; Robert Nozick; moral remainders; moral residues; morally appropriate response

There are cases where one must act in the face of multiple competing duties and any available act will violate at least one such seeming duty and (thus/otherwise) at least plausibly have some wrong-making features. Recall, for instance, Joel Feinberg's classic example:

[Y]ou are on a back-packing trip ... when an unanticipated blizzard strikes the area with such ferocity that your life is imperiled. Fortunately, you stumble onto an unoccupied cabin, locked and boarded up for the winter, clearly somebody else's private property. You smash in a window, enter, and huddle in a corner for three days until the storm abates. During this period[,] you help yourself to your unknown benefactor's food supply and burn his wooden furniture in the fireplace to keep warm.¹

Nearly all parties to the voluminous debate on this case agree that one does not act wrongfully by using the cabin.² Debates instead concern how to characterize the moral status of the cabin-related actions. Feinberg describes the case as one in which you are "justified in doing all these things, and yet you have infringed the clear rights of another person."³ While one could instead

¹ Joel Feinberg, "Voluntary Euthanasia and the Inalienable Right to Life" (1978) 7(2) *Philosophy & Public Affairs* 93 at 102 [Feinberg, "Voluntary"].

² Citations appear throughout this text. Commentary on the legal case that likely inspired it, *Vincent v. Lake Erie Transportation Co.*, 124 NW 221 (Minn Sup Ct. 1910), is also voluminous. I take issues about how the law should address these cases to be severable from cases of the relevant moral interests and sever them here. See Arthur Ripstein, *Private Wrongs* (Cambridge: Harvard UP, 2016) at 146 for a good explanation of how the relevant case is best understood in terms of legal wrongs severable from ethical ones. In some respects, Feinberg's focus on property, a classic legal category, can obscure this distinction. Further cases below make the non-legal value clearer.

³ Feinberg, "Voluntary", *supra* note 1 at 102

state that there is the relevant property right has a built-in exception for cases of exigency, the property right itself appears to be implicated, helping to distinguish cases in which rights are not implicated because the relevant act falls within an exception and right-implicating cases.⁴

I take the case as an example of a more general phenomenon in which fulfilling one's all-things-considered duty requires violation of pro tanto duties, which would otherwise be wrongful.⁵ Yet how one should treat the pro tanto property right in this and similar cases remains contentious. One may simply state that the relevant right is justifiably infringed. Yet doing so would likely fail to account for plausible (albeit non-universal) intuitions that Feinberg's hiker, for just one example, should compensate, apologize to, or at least explain the exigent circumstances to the cabin owner and would wrong that owner (or otherwise act wrongfully) by failing to do so. The right must remain operative to trigger such second-order duties.

'Moderate' deontologists explain the intuitions by positing that all-things-considered rightful actions can 'override' or otherwise outweigh pro tanto duties but the duties remain.⁶ This group includes earlier figures, like W.D. Ross and Robert Nozick, who also go on to argue that the violation of the pro tanto duty is a wrong-making feature of the rightful act; that the wrong-making features of acts in like cases (can) leave 'traces' of wrongfulness that require specific responses; and that failure to subsequently respond in the right way can itself be wrongful.⁷ Even outweighed 'rights' remain present in a case and can trigger second-order moral duties.

⁴ See e.g., Shelley Kagan, *Normative Ethics* (Boulder: Westview Press) at 86-90 on the relevant distinctions. Kagan, of course, focuses on harm-related issues and uses a different case to make the distinctions but he rightly notes that even moderate deontologists can describe cases in different ways and view some as overriding or outweighing cases.

⁵ This phenomenon is central to moderate deontology. For a good overview of that moral position, see Samantha Brennan, "Moderate Deontology and Moral Gaps" (2009) 23 *Philosophical Perspectives* 23.

⁶ I adopt the language here from Brennan, *ibid* at 28n14, 41-42. It is also called "threshold deontology"; e.g., Larry Alexander, "Deontology at the Threshold" (2000) 37 *San Diego LR* 893. I view the terms as synonymous. Kagan, *supra* note 4 limits discussion of traces to overriding cases. Note complications of this view in note 22.

⁷ David Ross, *The Right and the Good*, ed by Philip Stratton-Lake (Oxford: Oxford UP, 1930/2002); Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974) at 180 [Nozick, *ASU*]. Pinpoint citations appear below.

Yet even if this basic posit of moderate deontology is true and best explains many cases, questions remain. One glaring issue decades after Nozick, let alone Ross, is that it remains unclear *when* the wrong-making features leave ‘traces’. It is not obvious that traces always remain when fulfilling one’s all-things-considered duty requires the violation of pro tanto duties.⁸ The question of when traces exist is unanswered in Feinberg, Ross, Nozick, or the small contemporary literature thereon.⁹ This point is rarely discussed (and the conditions for traces remaining are not the central purpose of the few exceptions that discuss the point (cited below)). This presents an important area of research for moderate deontologists. A convincing account of the conditions in which traces remain could support a defense of traces and moderate deontology more generally.¹⁰

This work argues that traces remain only if an all-things-considered rightful act (i) violates a non-consequentially-grounded pro tanto duty that (ii) belongs to a foreseeable class of persons who hold the correlative right and (iii) the wrong-making features of the act are in a ratio with the right-making features such that the wrong-making features are non-negligibly present. I present these primarily as necessity conditions for traces. Future works may identify additional

⁸ Thomas Hurka, *British Ethical Theorists from Sidgwick to Ewing* (Oxford: Oxford UP, 2014) at 184-185 [Hurka, *British*]. I use the term ‘pro tanto duties’ here despite many historical figures, including Ross, appealing to ‘prima facie’ ones largely to avoid concerns about epistemic glosses of the latter.

⁹ For another example of the literature, see Matthew H Kramer, *Torture and Moral Integrity: A Philosophical Inquiry* (Oxford: Oxford UP, 2014) at 2-14, which invokes Ross. A small literature focused on moral remainders in the 1980s offered some discussion of when ‘traces’ may remain, though they often instead focused on whether ‘traces’ could exist, which I largely set aside here for the sake of examining when they could plausibly do so. Consider e.g., Phillip Montague, “Rights and Duties of Compensation” (1984) 13(1) *Philosophy & Public Affairs* 79 and Nancy Davis, “Rights, Permission, and Compensation” (1985) 14(4) *Philosophy & Public Affairs* 374, each of which engaged with Judith Thomson, “Rights and Compensation” (1980) 14(1) *Nous* 3 and Feinberg, “Voluntary”, *supra* note 1. Both focus primarily on the nature of rights and on whether violations of property rights can ever trigger duties of compensation or compunction, not when those duties can generally be triggered. Other relevant works include Thomson’s *Rights, Restitution, and Risk: Essays in Moral Theory*, ed by William Parent (Cambridge: Harvard UP, 1986) and FM Kamm, *Morality, Mortality Volume II: Rights, Duties, and Status* (Oxford: Oxford UP, 1998) [Kamm, *Vol II*]. But the terminological distinction mentioned in note 25 may have substantive implications.

¹⁰ Fully establishing the existence of traces is beyond the scope of this work. So too are questions about their legal significance. This distinguishes my approach from that of Thomson and Feinberg in *ibid*. While the existence of traces likely should have legal implications, addressing them requires its own work. I focus here on when traces remain as a strictly ethical matter such that they ground moral duties of compensation and/or compunction.

necessity conditions. Yet plausible alternative candidate conditions discussed below do not seem necessary, so my conditions can serve as presumptive sufficiency conditions absent further argument.¹¹ The ill-feeling of compunction toward and/or the provision of compensation to subjects of the wrong-making features of all-things-considered rightful actions are (at least defeasibly) appropriate and morally required (at least where possible) where (i)-(iii) obtain.¹²

Background

This is a project in Ross/Nozick-style moderate deontology. On this picture, as Thomas Hurka explains, “there are constraints on how you may promote the good but they can in some cases be outweighed.”¹³ Ross’s account rests on “a difference between *prima facie* [viz., pro tanto] duty and actual or absolute duty”.¹⁴ ‘Prima facie duty’ (and thus ‘pro tanto duty’) refers “to the characteristic... which an act has, in virtue of being of a certain kind (e.g. the keeping of a promise), of being an act which would be a duty proper if it were not at the same time of another kind which is morally significant.”¹⁵ A pro tanto duty, in other words, is a morally relevant feature of an act that provides reason to conform with its demands where there are no competing demands. Where Ross holds that there are a variety of pro tanto duties that can exist at the same time,¹⁶ a further concept is needed to explain what to do when all the morally relevant features of an act need to be weighed against one another. ‘Duty proper’ or ‘all-things-considered duty’ is

¹¹ I do not, of course, claim to address all possible alternatives. Exploring others is valuable.

¹² These conditions are necessary regardless of whether traces require a conjunction or disjunction of compensation and compunction. I thus use an ‘and/or’ locution here. However, as I argue below, the existence of traces is easier to establish if these requirements are disjunctive and/or the compensation requirement is not strictly monetary.

¹³ Hurka, *British*, *supra* note 8 at 70.

¹⁴ Ross, *supra* note 7 at 28.

¹⁵ *Ibid* at 19. Such a duty “is an objective fact involved in the nature of the situation, or more strictly in an element of its nature, though not, as duty proper does, arising from its *whole* nature”; *ibid* at 20. This definition appears problematically circular as presented. Yet where each pro tanto duty is understood as something that tends towards duty proper (as at e.g., 20), we can see that a ‘prima facie’ or ‘pro tanto’ duty is one that tends towards duty proper and would be duty proper where other competing tendencies are not present. This is not circular.

¹⁶ *Ibid* at 19.

what one should do in such circumstances. Pro tanto duties exist in most cases but can be defeated by other relevant duties. Compliance with all-things-considered duty is always necessary to fulfill morality's demands.¹⁷ Yet compliance with one's all-things-considered duty sometimes requires violating pro tanto duties. Ross considers these wrong-making features of rightful acts. They remain features of the acts even when outweighed and, Ross suggests, require appropriate responses:

When we think ourselves justified in breaking, and indeed morally obliged to break, a promise in order to relieve someone's distress, we do not for a moment cease to recognize a *prima facie* duty to keep our promise and this leads us to feel, not indeed shame or repentance, but ... compunction, for behaving as we do; we recognize, further, that it is our duty to make up somehow to the promise for the breaking of that promise.¹⁸

While initially presented as a description of how we respond in such cases, this is also a prescription for how we should act. Nozick used the term 'trace' to explain the phenomenon.¹⁹

Nozick's model is indebted, but non-identical, to Ross's account.²⁰ Nozick identifies a set of wrong-making features of acts, W, and right-making features, R. He writes that there are many acts with wrong-making 'W-features' and right-making 'R-features'.²¹ In interesting cases, W-features *and* R-features are relevant. Nozick too thinks that the W-features in these cases

¹⁷ Hurka, *British*, *supra* note 8 summarizes this well at 69-70. Ross recognizes problems with the use of the term 'prima facie duty'. He refers to the same feature as a 'conditional' duty. It could also be called a 'ceteris paribus' or 'other-things-equal' duty; *ibid* at 69. 'Pro tanto duty', the term used here, is also largely equivalent. See note 8.

¹⁸ Ross, *ibid* at 28. Ross's list of prima facie duties, discussed below, is likely incomplete and includes duties that are no longer fashionable. But one does not need to subscribe to his view of which prima facie duties exist to recognize that sometimes, for instance, a duty to keep a promise to X will conflict with a duty to rescue Y. Even if rescuing Y is the right thing to do, that does not make breaking the promise to X right too. X is plausibly owed recognition that X has been wronged in the form of an ill-feeling (compunction) and/or compensation for X's loss.

¹⁹ In his most famous statement on the topic, which introduces the term 'trace', he writes that "Overridden rights do not disappear, they leave a trace"; Nozick, *ASU*, *supra* note 7 at 180. The treatment of the topic there is minimal. A footnote on page 180 leads to page 345 and a reference to "Moral Complications and Moral Structures" (1968) 13 *Natural Law Forum* 1 [Nozick, "Moral"]. Nozick does not use the term "trace" in the 1968 piece. The 1974 footnote states that he takes overriding duties and moral traces to be the topic of the 1968 text. He does not limit recognition of traces to overriding cases in 1968.

²⁰ Nozick, "Moral", *ibid* at 7.

²¹ He makes this claim conditionally in *ibid* at 7, but identifies clear cases where traces remain at 34. The definition there does not actually say that traces exist, but a footnote at 34n45 establishes that they do in some cases.

warrant response.²² Improper response to remaining W-features is itself defeasibly wrongful: “Omitting to make reparations, amends, or explanations to those harmed by W-features ... [of an act] is a W-feature of a course of action, and functions just like other W-features.”²³

For these moderate deontologists, then, a pro tanto duty is a defeasible reason to act in a certain way where a failure to conform would be a W-feature of an act in most, if not all, cases. An all-things-considered duty is a reason to act where non-compliance therewith is all-things-considered wrong.²⁴ Moral principles provide pro tanto duties (and pro tanto reasons) to act in certain ways. Violating these duties is prima facie wrongful. However, the wrongfulness of violating these pro tanto duties (and the duties themselves) can be outweighed by the good, right-making consequences of performing the act. Per Ross and Nozick, the outweighed duties can remain in a situation even when outweighed and can have effects. Following Nozick, call outweighed duty-based W-features ‘traces’.²⁵ A trace is thus a violation of a pro tanto duty such that there is a W-feature of an all-things-considered rightful act that requires some response.

Call the morally required responses to the existence of traces ‘trace requirements’.

Everyone in this debate agrees that there are possible effects that should follow the performance of an act where a trace remains. The first possible effect is an ill-feeling about the decision to act

²² Nozick distinguishes several case types in *ibid.* I label them all outweighing cases since all leave traces of the same type in the same circumstances: W-features and R-features interact in all cases. Differences between them are orthogonal to my present aim. R-features and W-features can be weighted differently based on qualitative differences in the features on plausible understandings of how they interact to determine what all-things-considered duty requires. Deliberately stepping on someone’s toe with considerable force and killing someone are both W-features of acts, but do not need to be weighted equally in full calculations of what one ought to do all-things-considered. I discuss the features in a simple additive fashion using whole numbers below for the sake of clarity, but the value of the features can be weighted (even fractionally) when determining what one ought to do. I return to this point and explain that features should be weighted while proposing a ‘Ratio Condition’ for traces below.

²³ *Ibid* at 35.

²⁴ Ross, *supra* note 7 does not frame his discussion in terms of reasons. I translate his work into reasons talk to accord with norms of current ethical discourse.

²⁵ See note 19. ‘Moral remainder’ also applies to the relevant phenomenon. ‘Moral residue’ may differ. If so, then Feinberg and Thomson’s discussions are related to, but distinct from, this work. My primary examples are from Ross and Nozick and I focus on how ‘traces’ operate there. Feinberg is offered mostly to distinguish cases.

and the fact that one acted on that decision. This ill-feeling is distinct from regret-proper, remorse or guilt. It does not acknowledge the act as a whole as wrong or believe punishment is necessary to remedy the harm as guilt might. It does not lead one to wish for counterfactual outcomes as remorse or regret might. It is an unease that a particular person was impacted by the outcome and you could have avoided that impact by acting otherwise. Following Ross, call this ill-feeling ‘compunction’.²⁶ The second possible effect is a need to compensate the holder of the right correlative to the duty. I take an ecumenical view on what constitutes ‘compensation’ here. Compensation is a good that can be understood as making restitution, reparations, or amends for a wrong. Consistent with Ross and Nozick, I accept even explanation as a form of compensation.

Whether the appropriate response to a trace remaining is conjunctive (requiring compunction **and** compensation) or disjunctive (requiring one or the other) is a further concern. One reading of Ross suggests that the list of appropriate moral responses is conjunctive. Ross says that the duty to ‘make up’ for the loss is ‘further’ to the necessity of and plausibly duty to feel compunction. Where a trace exists, one should feel compunction *and* compensate the person whose pro tanto right was violated.²⁷ Nozick is less clear on this. He presents a list of responses disjunctively, using ‘or’, but then only contrasts different species of compensation. This suggests a disjunctive view where one species may suffice, but a suggestion is far from determinative. Hurka’s interpretation of Ross provides a third possibility. He reads Ross as holding that a trace “makes it appropriate to feel ... [compunction] and can ground a further duty to compensate the

²⁶ Even this could be too strong where compunction’s dictionary definition and lay use implies that it follows ‘bad’ acts. Yet something stronger than unease and weaker than regret is needed. No other word properly fulfills this role.

²⁷ Ross may be unable to recognize a *duty* to feel compunction given his views on the voluntariness of feelings. I thus offer the ‘necessity of’ phrasing here. Yet even if we simply say that the feeling and the compensation are both appropriate responses to the existence of a trace, it remains the case that inappropriate action could wrong others in at least in a Rossian view (if not on Ross’s own view) and that this is a plausible understanding of traces. For a strong statement against the idea of a duty of compunction, see R Jay Wallace, *The Moral Nexus* (Princeton: Princeton UP, 2019) at 173n33.

person to whom the duty was owed.”²⁸ He later states that the trace makes “it appropriate to feel compunction and sometimes to pay compensation.”²⁹ This is another form of disjunction where a trace requires compunction *or* a combination of compunction and compensation.³⁰

As explained below, factors affecting when we think traces remain impact determinations of whether a disjunctive or conjunctive view of trace requirements is necessary. The conditions I promote are necessary for traces to produce trace requirements on any view, but the existence of traces is easier to establish on disjunctive models of the consequences of traces. My argument for this claim is case-based and appears in my discussion of when traces remain. A combination of casuistry and analysis of the moral framework in which traces are promoted further establishes that traces do not always remain in outweighing cases and the conditions for when they do so.

Highlighting the Issue

The argument below is conditional: if traces exist, it is most plausible that they exist only where the conditions that I promote obtain. Fully establishing the existence of traces requires its own work. The kinds of cases that support the existence of traces are nonetheless helpful for highlighting the current issue. I will accordingly present a case where a trace appears to remain and a case where they do not to highlight the need for criteria where they remain. Other examples appear below and further support the existence of traces in at least some cases.

For an initial example, Nozick’s classic (Rossian) case, sourced in the duty fidelity, provides strong motivation for the existence of traces in at least some cases:

Missed Meal: “[W]here you don’t go to a dinner to which you promised to go, in order to minister to an accident victim whom you encounter on the way to the dinner [...] you must call your hostess ‘as soon as possible’ (compatible with your best ministering), making explanations, etc.”³¹

²⁸ Hurka, *British*, *supra* note 8 at 71.

²⁹ *Ibid* at 73.

³⁰ Hurka’s “makes it is appropriate language” (*ibid*) helps address the issue in note 27.

³¹ Nozick, “Moral”, *supra* note 19 at 34n45. Ross, *supra* note 7 at 18 says something similar, albeit less concisely.

This case creates duties of explanation and reparation beyond mere etiquette. One can imagine the hostess complaining to a friend after being stood up for dinner: “Not only did he miss dinner, but he did not even have the decency to tell me why or apologize! I don’t know that I would even have dinner with him now, but the least he could have done is *tried* to book a makeup appointment.” This complaint is justified. The most plausible explanation for the complaint’s justification is the failures to explain, apologize, and/or make up for the missed dinner independently or jointly constitute an independent wrong beyond missing the meal.³² Feelings of compunction are also appropriate (and explicitly required in Ross’s version of the case).³³ You should feel bad for your hostess for having done something that *prima facie* wronged her.

Hurka and Esther Shubert then provide one of the more compelling cases where traces do not plausibly remain despite all-things-considered rightful actions requiring violations of *pro tanto* duties, which I name here for the sake of simplicity:

Another Transplant: “If you let five patients who needs transplants die because the only way to save them is to kill another innocent person, you shouldn’t feel compunction about your choice to let the five die and don’t owe anyone compensation.”³⁴

The five patients are plausibly owed at least *pro tanto* duties of rescue in the case on offer (at least on a Rossian or Nozickian understanding of such duties). Yet most people would likely agree with Hurka and Shubert’s conclusion, raising questions about why traces do not remain.³⁵

³² This result is particularly compelling if we think there are morally appropriate responses to acts. The wrongfulness of failing to fulfill trace conditions would then be even clearer. For examples of morally appropriate responses, consider Thomas Hurka, *Virtue, Vice, and Value* (Oxford: Oxford UP, 2011) at e.g., 17.

³³ See note 31. How to characterize the form of compensation and compunction owed is a further matter. I offer some indications of what I view as appropriate here but do not offer a principle for identifying it in all cases. For an intriguing account suggesting that one should do the ‘next best’ thing after failing to fulfill a duty, see John Gardner, “What is Tort Law For? Part 1: The Place of Corrective Justice” (2011) 30(1) *Law and Philosophy* 1. That excellent article is, however, focused on the legal significance of traces and well beyond the scope of this piece per note 2.

³⁴ Thomas Hurka & Esther Shubert, “Permissions to Do Less Than the Best: A Moving Band” in Mark Timmons, ed, *Oxford Studies in Normative Ethics: Volume 2* (Oxford: Oxford UP, 2012) 1 at 17-18.

³⁵ An anonymous reviewer suggests that none is owed because no *pro tanto* duty has been violated. Rather, the reasons to save them have been excluded in the sense offered by Joseph Raz. This idea is compelling but treating this as a case where *pro tanto* *rights* remain is *prima facie* defensible given the central commitments of moderate

Given the existence of cases where traces plausibly remain after fulfilling one's all-things-considered duty in violation of pro tanto duties and cases where traces plausibly do not remain, some explanation for when they remain is necessary (conditional on traces' actual existence). Call the conditions necessary for a trace to remain present and create duties of compunction and/or compensation 'trace conditions'. Another Transplant undermines the straightforward account of trace conditions whereby traces are generated whenever an act violates a pro tanto duty. Some other account of trace conditions remains necessary. Nozick and Ross do not offer much help. Nozick does not even proffer any suggestions. The metaphors Ross uses to describe how traces remain do not add much. Ross's main metaphor comes from physics:

Qua subject to the force of gravitation towards some other body, each body tends to move in a particular direction with a particular velocity; but its actual movement depends on *all* the forces to which it is subject.³⁶

The relevant force remains present even as it is overwhelmed. But is this always the case? If so, is morality always structurally identical to physics? Others raise similar issues with the metaphor.³⁷ It is possible that forces combining in one way could eliminate a third force that was also present. It is not clear when this should happen in Ross. Scholars have yet to definitively establish the conditions under which traces remain. The rest of this work tries to start doing so.

When Wrong-making Features Leave Traces

Questions about traces are interesting where one defines a trace in terms of the consequences of a W-feature remaining operative: the trace requirements.³⁸ Focusing on trace requirements also illuminates when traces retain their force and when R-features combine to

deontology and is at least far from idiosyncratic. A Raz-ian supplement to my account may be worth exploring as an adjunct (or even alternative in the sense discussed in note 11). Doing so requires more space than is available here.

³⁶ Ross, *supra* note 7 at 28-29.

³⁷ Hurka, *British*, *supra* note 8 at 73 criticizes the metaphor on another ground. See John Broome, "Reason Versus Ought" (2015) 25 *Philosophical Issues* 80 at 91 for yet another critique.

³⁸ Indeed, on one interpretation, the necessary consequences of the acts are not just the trace requirements but the traces themselves; Hurka & Shubert, *supra* note 34 at 9.

negate them. Intuitions about when moral responses are necessary help articulate conditions for when traces remain. I will defend now three necessary trace conditions.

i. The Non-Consequentialist Duty Condition

The first condition is that the outweighed pro tanto duty cannot be grounded exclusively in the need to promote the good. Call this the Non-Consequentialist Duty Condition. Ross's list of pro tanto duties, while imperfect, highlights a distinction between two classes of duties: those grounded in a broader consequential duty to promote the good and those grounded in non-consequential considerations. Ross's complete list of pro tanto duties includes duties of "fidelity", which rest on promises, duties of "gratitude", which "rest on previous acts of other men", duties of "justice", which rest on the necessity of pairing distribution with merit, duties of beneficence, which "rest on the mere fact that there are other beings in the world that we can make better", duties of "self-improvement", which rest on the fact that we can improve ourselves, and "more stringent" duties of "non-maleficence".³⁹ Justice, beneficence, and self-improvement are commonly understood to be consequentially-grounded, serving as aspects of a broader duty to promote the good.⁴⁰ The others are not. While there is reason to question Ross's view on the justice case, the duties of self-improvement and beneficence are, at minimum, cases where the sole grounding for the duty is the fact that some good could be promoted. Call these two duties 'consequentially-grounded duties' since they only concern promoting the good. Call duties that are clearly not solely concerned with promoting the good 'non-consequentially-grounded duties' or, if one prefers simplicity or brevity, 'non-consequentialist duties'.

I submit that only the non-consequentially-grounded duties leave traces. The exemplary case in which traces do not appear, Another Transplant, provides some support for this view.

³⁹ Ross, *supra* note 1 at 21-22.

⁴⁰ Hurka, *British*, *supra* note 2 at 179.

One of the primary things distinguishing Another Transplant from Missed Meal is that the specific pro tanto duty being violated in Another Transplant is the duty of beneficence. The same duty grounds Hurka's other example where traces do not remain, which I rename here:

Another Set of Tracks: "...[W]here the only way to save five people from being run over by a trolley is to push another in front of it [...and] you decide not to ... I do not think either compunction about not saving the give or any compensation is called for; you just did the right thing."⁴¹

Here too the consequential grounding of the violated pro tanto duty is notable. Given the presence of this duty in the two classic non-trace cases, there is at least a pro tanto case for suggesting that is the feature distinguishing them from cases remain. Notably, this distinguishing feature is grounded in a difference that is relevant to the distinctions between kinds of duties identified in Ross. Where Hurka and Shubert worry that an action-favoring/agent-favoring distinction that could explain Another Transplant is ad hoc,⁴² this alternative explanation, sourced in distinctions present in original works proposing traces, appears preferable.

Ross, at least, then thinks that duties to the self cannot ground duties of compensation and so would not recognize a conjunctive view of traces in duty to the self cases.⁴³ There is some plausibility to the idea that the self-improvement right in particular does not leave traces on a conjunctive view either. Accepting the controversial idea that there can be duties to the self, it remains the case that failure to fulfill the duty to the self may not warrant feelings of

⁴¹ *Ibid* at 184-185.

⁴² *Ibid*. Likewise, the rights violation/rights infringement distinction in John Oberdiek, "Lost in Moral Space: On the Infringing/Violating Distinction and its Place in the Theory of Rights" (2004) 23(4) *Law and Philosophy* will not resolve this issue. Oberdiek's distinction highlights when *more* "moral residue" remains, rather than when any exists. Oberdiek's view seems consistent with the present proposal. No trace is present here partly because there is neither a rights infringement nor a violation nor any other kind of failure to fulfill the relevant kind of duty. Oberdiek's infringements that are not wrongs could, however, not leave traces given the wrong-making-based common definition of traces. See also Cécile Fabre, *Cosmopolitan Peace* (Oxford: Oxford UP, 2016) at 153-156.

⁴³ Ross, *supra* note 7 at 26.

compunction in any case. Making people feel bad about themselves when no others are harmed seems inconsistent with the duty to promote the good undergirding a possible contrary proposal.

There are, moreover, further distinctions between consequentially-grounded and non-consequentially-grounded *pro tanto* duties that suggest that they will have different consequences in many cases. These could explain their differences in would-be trace cases. One important distinction is that the consequentially-grounded duties of beneficence and self-improvement are often viewed as supererogatory in nature and so unlike non-consequentially-grounded duties in a relevant respect. Regardless of whether consequentially-grounded duties are always supererogatory, it is clear that one is not *always* duty-bound to improve the lives of others even absent defeaters. Yet one is always duty-bound not to harm others absent defeaters. This is, I submit, one way in which the duty of non-maleficence is ‘more stringent’ than the duty of beneficence. It can also explain why the consequentially-grounded duties are less stringent: they are of a fundamentally different kind than the others. If less stringent, it would be unsurprising if they failed to create second-order duties of compunction and compensation when violated.

This condition has the implication that one ought not feel bad when one fails to assist another to whom one owes no other duties because morality as a whole demands that one perform another task, but this implication does not depend on adoption of implausible intuitions. Obvious cases where the implication may seem problematic such as where one has made X a promise and can help Y with some important project, but this is slightly less stringent a duty than my duty to X, do not undermine my position.⁴⁴ Absent a special relationship with Y, it is not clear that compunction or compensation are due there. Consider this inverse of Missed Meal:

Promises or Parades: I am walking to a lunch meeting with a colleague from a branch in a city miles from my own whom I have promised to meet while making a regular visit to

⁴⁴ I thank [redacted] for discussion of this point.

his city. On the way there, I pass the construction of a parade float for an annual festival. The parade would bring joy to many, but it depends on the building of this float.⁴⁵

What should I do in this situation? Most people would agree that I should keep my promise here despite the pro tanto duty of beneficence I could fulfill by pitching in. I think I should go to my meeting without even giving it another thought. I should have no compunction about attending the meal and owe no one any explanation for not pitching in. To the extent that some ill-feeling is required, it may be so negligible that I cannot feel it, undermining the sense in which a trace would actually operate. Likewise, it is not clear to me that one should feel bad about deciding to skip a school class to save money for his family. Study to make up for lost time may be morally appropriate, but I am not certain it qualifies as compensation. I suspect that any lingering intuitions I have to the contrary stem from how far I am now removed from the working-class background in which the reality of needing to feed one's family is acute.

This condition does not violate the equality of the pro tanto duties that appears in Ross (and some variation of which should likely hold in any genuine deontology that is pluralistic about duties). None of this means that consequentially-grounded duties are less important. It simply means they operate in different ways in different cases. The general structure of moderate deontology necessitates such differential treatment. The fact that the greater duty to fulfill the good also serves as the 'threshold' for when one ought not to act in accordance with one's deontological commitments means that consequential deontology will serve different roles in different parts of morality. This alone does not mean any pro tanto duties are weighted more

⁴⁵ An anonymous reviewer notes a similarity between this case and those promoted by Kamm. I did not have Kamm directly in mind when drafting this example but I was generally inspired by Kamm, *Vol II, supra* note 9, ch 12 when thinking about the issues in this section and, indeed, this paper, so I am unsurprised by any subconscious influence.

when deciding what to do all-things-considered. It just means that duties have different operations and consequences in different cases, which is consistent with the present proposal.⁴⁶

One can, of course, generate potential counterexamples to this condition, but the most compelling example I have seen to date strikes me more as evidence of the difficulty of specifying the relationship between non-consequentialist and consequentialist duties than evidence that the latter can ground traces. An anonymous reviewer offers this example:

Reasonable Moral Expectations [RME]: Richie gains a resource that cannot be divided and shared with multiple parties. He is well-off and does not need that resource. *Ex hypothesi*, Richie has a consequentialist-grounded obligation to give it to someone who needs it. Ritchie forms the intention to give it to Annie based on a belief that Annie most needs it. Annie comes to know this. Richie knows that Annie knows this. At the last minute, Richie gains evidence that Pip has more need and gives the resource to Pip.⁴⁷

Whether this is even an example of Richie performing an all-things-considered rightful action is debatable, but I can grant that here. I can also grant that Annie might form a reasonable expectation of payment in this case, the failure to make good on that expectation likely requires an explanation, and some may view the thwarting of expectation as a W-feature of the action. A need for compensation is less plausible, so this may only ground a weak form of compensation or a disjunctive trace in the best case, but the thwarting of interests seems like a W-feature capable of grounding a duty of explanation and/or compunction. Yet this still does not strike me as an obvious counter-example to the Non-Consequentialist Duty Condition. The duty not to thwart reasonable moral expectations would need to be non-consequentialist in nature for that to be so. This is by no means obvious. Annie's expectations may have their origins in the consequentialist duty to aid the poor in this case but the duty not to thwart her reasonable moral

⁴⁶ This threshold function may even help justify consequentially-grounded pro tanto duties being less stringent in the first instance since the underlying motivation (promotion of the good) is realized elsewhere even if less stringency is demanded in the first instance.

⁴⁷ I edited, labelled, and added names to the example for consistency's sake. It is otherwise original to the reviewer. I am, of course, aware that the famous fictional fortunes given to an Annie and a Pip were not based on need alone.

expectations does not appear to itself be consequentially-grounded. One can, of course, (reasonably) disagree with me on the nature of the relevant W-feature here. Disagreements on how to interpret cases like RME clearly complicate this condition in ways that require greater elaboration than can be developed here. But the idea that consequential duties are not relevant to the existence of traces where they have grounded further non-consequentialist duties the failure of which constitutes a W-feature of an act has apparent merit. Nothing in RME changes that.

ii. The Identity Condition

The second trace condition is a foreseeable person or group of persons who would be wronged in first instance by the right act with W-features and then by a failure to meet trace requirements. Call this the Identity Condition. It posits that a duty must be owed to someone to leave a trace. The primary reason to believe that this condition obtains is that the outweighed W-features in trace cases can only create a second-order duty to feel compunction or pay compensation where they attach to someone and they can only attach to someone where there is someone who would be wronged in the first instance. There is reason to question the existence of impersonal wrongs. Absent such wrongs, a W-feature can only be present where there is a person wronged by the act holding that feature. The necessity of the Identity Condition clearly follows.

Yet even if there are impersonal wrongs, there needs to be a remaining person to be wronged for trace conditions to obtain and the second order wrong of failure to respond to be possible. Otherwise, there is no one to be wronged by the failure to respond appropriately to the trace. The trace is normatively inert. If the Identity Condition does not obtain, it is hard to see how the W-feature could attach to someone in the first place in a way that would ground their second-order right to compunction and/or compensation in a trace case. Indeed, even if we take a compunction-only disjunctive view of traces and further think that one ought to feel bad about

the creation of an impersonal wrong, the fact that the compunction must be directed at the person effected in the present understanding of traces means that the ill-feeling we ought to feel in such cases cannot be trace-based, but must have some other origin. Traces only create feelings of compunction and compunction is fundamentally directed at a person wronged by the act.

If this argument for the Identity Condition is compelling, it can also help link this condition to the first one. The proposed condition is particularly salient if the duties violated are non-consequentialist. Duties correlative to rights must be held by someone. The Identity Condition is thus related to the Non-Consequentialist Duty Condition and my conditions are not an ad hoc collection. Yet neither condition is reducible to the other. The Non-Consequentialist Duty Condition specifies the type of duty owed to the subject of the Identity Condition in trace cases. The Identity Condition alone leaves open the possibility of other kinds of wrongs leaving traces. The normative relationships between these proposed trace conditions helps support both.

The Identity Condition does not demand that any correlative right belong to an identified individual. It accepts that rights may be held by a large number of persons who are not easily identifiable. A restrictive, individualist construction whereby the relevant wrong must be plausibly described as a harm to a specifically-identifiable person is implausible. Nozick gestures at a harm condition that appears tailored to individual specified persons, but the operative condition is more plausible when interpreted as consistent with my less restrictive Identity Condition, rather than the individualist requirement. Nozick defines the relevant rights of response to traces as belonging to “whoever is harmed by its W-features”.⁴⁸ The plausibility of this view turns partly on how one characterizes harm. Physical and mental harms conditions may be too demanding. Thwarting someone’s interest seems like a W-feature of the act that thwarts

⁴⁸ Nozick, “Moral”, *supra* note 19 at 34.

it.⁴⁹ But little that I say below turns on that. I find the potential requirement of a specific person wronged more worrisome. ‘Whoever’ must have a broader scope and apply to potentially far-reaching but foreseeable wronged persons to make the condition plausible. An individualist trace condition whereby one must be able to identify a specific person to whom one owes a duty is too strict to recognize the variety of rights-holders who could be wronged by an act.⁵⁰

An individualist trace condition also cannot explain a variety of cases, including:

System Excuse: A legal system is necessary for society to function. Many lawyers have left the profession rather than fulfill a professional requirement to take on morally odious characters. A lawyer must defend a morally odious hate group to maintain her role in the profession. The group has not targeted any specific individuals with hate speech but has broadly attacked a vulnerable minority population with smears. All defendants must have a lawyer for the legal system and thus society to function. If the lawyer leaves the profession, the legal system and society will no longer be able to function.⁵¹

The lawyer here has an all-things-considered duty to take this case. It is unclear whether her taking on the role harms a specified person. She appears to *help* the defendants. Yet it is plausible that she should feel bad for the members of the group targeted by the hate group, not only because they have been the subject of hate speech, but also because she gave some legal cover for and acknowledgment of the hate speech. Some explanation is likely also warranted.

The very idea of a system excuse is to explain why this pro tanto wrong is all-things-considered

⁴⁹ E.g., Joel Feinberg, “Harm and Self-Interest” in PMS Hacker & Joseph Raz, eds, *Law, Morality and Society: Essays in Honour of H.L.A. Hart* (Oxford: Clarendon Press, 1977) 284. This too likely addresses RME.

⁵⁰ I would not further extend the condition to capture persons who are affected in non-foreseeable ways. The chain of responsibility capable of grounding plausible duties of compensation and/or compunction must stop somewhere. Foreseeability is a non-ad hoc stopping point. While some laws hold persons accountable for non-foreseeable consequences, there needs to be some connection between the potential duty-bearer and potential rights-holder to ground actual rights. That relationship is plausibly lacking where the potential duty-bearer cannot even be expected to foresee the impact on the potential rights-holder. Even to the extent that this is implausible, it is also counterintuitive to think that someone commits a wrong when they fail to apologize to someone for the wholly remote effects of one’s actions. So, traces for remote W-features are *at best* only possible on disjunctive views.

⁵¹ The system excuse language appears in David Luban’s “The Adversary System Excuse” in David Luban, ed, *The Good Lawyer: Lawyers’ Roles and Lawyers’ Ethics* (Totowa: Rowman & Allanheld, 1983) 83 and *Lawyers and Justice: An Ethical Study* (Princeton: Princeton UP, 1988). Lawyers frequently discuss related ‘Last Lawyer in Town’ problems; e.g., Teresa Stanton Collett, “The Common Good and the Duty to Represent: Must the Last Lawyer in Town Take Any Case?” (1999) S Tex LR 137; W William Hodes, “Accepting and Rejecting Client: The Moral Autonomy of the Second-to-Last Lawyer in Town” (2000) 48(4) U Kan LR 977. I vary them here.

right. It is less clear that any amends or reparations are necessary. But this case could support even a conjunctive account of traces given the broad definition of compensation above.

An individualist ‘Identity Condition*’ is also implausible in climate change cases. Such a condition could entail that acts that damage the environment do not leave traces. There is some plausibility to this view. Environmental harms are the types of harms that you cannot reimburse at a certain point. Carbon offsetting can only go so far. On a plausible construction of ‘ought implies can’, the compensation trace requirement cannot be fulfilled for many acts. At that point of futility, even disjunctive views may not identify a trace. When preservation itself is futile, that futility can favor the harm, suggesting no ill-feeling for the act harming the environment should accrue. Yet ill-feeling and compensation for environmental harms sometimes seems appropriate even when the act that brings them about is all-things-considered right. Consider:

Polluting Factory: A factory is a major producer of pollutants. Workers at the factory are marked for death by a totalitarian government that views the type of persons currently working there as subhuman and are only saved by virtue of their jobs there. The owner is an environmentalist but knows the factory could not continue to operate in a way that will save lives if environmental protections are in place.

The factory owner should, plausibly, feel ill about the avoidable pollution. The appropriate feeling is not mere outcome-focused agent-regret.⁵² The factory owner should not only feel bad about the outcome in total, but for the foreseeable impact *on the persons impacted*, plausibly including society as a whole and/or future generations and members thereof. The known ill-effects of the pollution are a W-feature of running the factory. The factory owner must show respect for the persons affected by feeling compunction. The potential killer of the factory

⁵² On agent-regret, see Bernard Williams, “Moral Luck” in *Moral Luck* (Cambridge: Harvard UP, 1981) 20 at 28-30. For recent discussions of relevant parts of Williams, see e.g., Julie Tannenbaum, “Emotional Expressions of Moral Value” (2007) *Philosophical Studies* 43; Jordan Mackenzie, “Agent-Regret and the Social Practice of Moral Luck” (2017) 94(1) *Res Philosophica* 95; David Sussman, “Is Agent-Regret Rational?” (2018) 128(4) *Ethics* 788. Sussman discusses how agent-regret differs from other moral phenomena at 792-796.

workers would also owe his grandson an explanation of his role in the conditions that made the factory owner's acts necessary. If the potential killer and the factory owner's grandchildren lived in a post-apocalyptic dystopia brought about by climate change, both the potential killer and the factory owner would also owe their (at least currently living) grandchildren an explanation and apology for contributions to the creation of the world that harms the grandchildren. These intuitions, if shared, may also support the relevance of ratios for reasons discussed below.

I am less confident that other identity relations matter here. Consider, for instance, whether the identity of the beneficiary of the all-things-considered right action is relevant for the existence of a trace. If Feinberg's hiker avoided blizzard conditions but still came across a starving individual and broke into the cabin to secure food and save a life, might he state that no trace remains? Intuitions on this can differ, but I think that at least some explanation and a mild sense of compunction is appropriate. This may support an ecumenical view of compensation in which explanation suffices.⁵³ It does not clearly establish that the identity of the beneficiary matters.⁵⁴ The classic trace case, Missed Meal, is a third party beneficiary case and I have yet to see a case in which the identity of the beneficiary of a rightful action with W-features is *clearly* relevant to a trace's existence. While further work on whether other identities matter may prove fruitful, my Identity Condition suffices as an initial default.

iii. The Ratio Condition

Finally, a third condition requires a small enough R-feature:W-feature ratio such that the proportionate trace requirements of compunction and compensation would be capable of being

⁵³ Cf. discussion of Bleeding Out below.

⁵⁴ Indeed, the reader who first raised the possibility that one should not compensate or apologize to the owner of the food necessary to save a life granted that some explanation was needed. Our disagreement may then just be about compunction. I think some mild compunction is appropriate here. But it is worth noting that a very strong weighting of lives against a low weighting of property rights could also negate that need under a version of my next condition.

felt by a person. Call this the Ratio Condition. Larger R-feature:W-feature ratios could lead R-features to so outweigh W-features as to negate the trace requirements, rendering any remaining trace negligible ineffective. Consistent with the structure of the pertinent cases, I grant that the W-features remain present even when these ratios are large. The W-features just do not bring about the consequences that traces do.⁵⁵ They are thus no longer traces properly-so-called. I will begin by motivating this condition by looking at the ratios of W- and R-features generally and then explain why the Ratio Condition actually requires us to weigh the total value of these features, a condition that also provides insight into the features' general structure.⁵⁶

The Ratio Condition is likely to be more controversial than my first two conditions, but I believe that it is plausible on both disjunctive and conjunctive views of trace requirements. When a large enough number of forces move up against a contrary force, the contrary force will have no real effect. The same general phenomenon can occur where the ratio between R-features and W-features is very large. There are other cases where R-features and W-features compete where traces do not appear to be present despite the clear existence of pro tanto duties and an identifiable person, let alone foreseeable group of persons, who the performance of the all-things-considered rightful acts would actually harm. Simply interpreting trace conditions as disjunctive does not explain why traces do not remain in all cases where R- and W-features compete since there appear to be cases when *no* trace responses are required. The potential moral irrelevance of some features cannot explain this phenomenon either: the formal structure of trace

⁵⁵ This condition too offers an alternative reading of Another Transplant. Perhaps the W-features of sacrificing a person are much weightier than the R-features of saving five lives. I find this implausible at a 1:5 lives ratio even if we deeply discount saving lives against sacrificing them (using weighting like that in note 22). Yet it is plausible that there is some ratio such that many R-features will combine in a way that negates the W-features' effects.

⁵⁶ Throughout the discussion, I use small W-features and large R-features to make the ratios clear. As explained below, however, future work must clarify how to properly weigh these features.

cases requires that all features be relevant.⁵⁷ In such cases, W-features remain present, but no trace requirements follow in cases where there are great discrepancies between the number of R-features and the number of W-features. The most obvious example is something like:

Lunch Date with Hawkeye: Clint promised to meet Laura for lunch. On his way there, he runs into Thanos's ongoing plan to destroy the world. Adopting his alter-ego, 'Hawkeye', the non-super-powered Clint misses lunch to defeat Thanos.

No trace is present in a case like Lunch Date with Hawkeye on a conjunctive view. If Clint feels bad when he misses a date with Laura, that has more to do with his love life than his moral one. Unlike Superman, Hawkeye lacks superpowers. He need not meet the superhuman requirement of feeling ill in such a case. Indeed, if such a requirement is morally necessary, our limited human faculties could not even feel the relevant phenomenon. Psychologically, it is difficult to feel the small ill warranted in this case at the same as the great joy that one also ought to feel when faced with the salvation of a wide swath of humanity (including Laura). Hawkeye may owe some explanation for his absence, but this is a limited trace if it is one. If any trace remains in this case, it is a disjunctive version in the style of Nozick alone. No ill-feeling is necessary.

Nozick does not discuss traces when he recognizes the need to limit rights in the face of potential catastrophe; it is not clear whether he thinks these are 'override' cases where traces remains.⁵⁸ But, regardless of what Nozick thinks, a variant that removes R-features, thereby altering the ratio, further supports the Ratio Condition. It suggests that as ratios get larger, otherwise very plausible disjunctive views too will no longer recognize traces. Consider:

⁵⁷ Nozick, "Moral", *supra* note 19 defines the moral phenomena discussed as outweighing cases here in terms of acts with both W-features and R-features. In these cases, W-features *must* remain. It is not enough to say that the W-features are irrelevant. But for discussion of irrelevant utilities, a form of irrelevant features, see FM Kamm, *Morality, Mortality Volume I: Death and Whom to Save From It* (Oxford: Oxford UP, 1998) ch 8. Her Principle of Irrelevant Utilities means to capture the result of cases like Flower Case in which a threat will hit one of two persons and there is a patch of beautiful flowers enjoyed by many next to one person that would be destroyed alongside him. Kamm thinks the enjoyment of the flowers is an irrelevant utility that should not lead one to choose to direct the threat one way (at 146). Iwao Hirose, *Moral Aggregation* (Oxford: Oxford UP, 2014) ch 8 is good on this.

⁵⁸ Nozick, *ASU*, *supra* note 7 at 30.

Heartbreaker Hawkeye: A newly single Hawkeye (no longer answering to ‘Clint’) promises to go to a less formal party. He misses it to attend to an equally dangerous plan by Loki. The party is a hit. The host does not realize Hawkeye did not attend until after learning of Hawkeye’s defeat of Loki. After seeing news coverage of the interaction on the television the next day, the host says, “I guess he missed my party. Hmm.”

This case requires neither compunction nor compensation. The host of the party learning of Hawkeye’s heroics should be and likely would be glad that Hawkeye missed it. Even asking for an explanation seems odd given when the party was a hit and the host did not notice Hawkeye’s absence. It would be good for Hawkeye to provide an explanation. I find it hard to believe it would be wrong not to. Hawkeye’s explanation appears supererogatory. An apology, in turn, seems inapt altogether. At minimum, the apology is more clearly supererogatory.

While one can disagree with my intuitions in this (or any) big numbers case (or about the reliability of intuitions in such cases), the underlying motivations for my intuitions in that case further support the Ratio Condition. Heartbreaker Hawkeye suggests that there will be cases where humans cannot respond in a morally appropriate manner to their good deeds and feel compunction at the same time. The very idea of morally appropriate responses grounding the existence of traces seems to undermine their lingering presence in large ratio cases. It is plausible that the force of any trace-like phenomena that could exist in these cases is more so negated by the R-features that the force of the W-features cannot be felt by humans. No human act can or should be required to feel or act in a manner proportionate to the force demanded. Where an overwhelming number of R-features are present, it is plausible to think that they negate the W-features’ effects, if not negate the W-features themselves. No feelings of compunction or even trivial acts of compensation are then necessary. If, counterfactually, there is a requirement for ill-feeling in such cases, it is so minimal that the relevant human actor would not actually experience the required ill-feeling. Indeed, he likely could not do so: I cannot feel a very very

very very little bit bad. Likewise, any compensation required would be negligible and perhaps unnoticed by the person ‘wronged’. But the issue here is not merely epistemic. Any apparently remaining trace is so heavily outweighed as to negate the trace requirements and leave the trace ineffective. In both instances, saying that morality demands that one act in response to a trace seems to violate ‘ought implies can’. In the second instance, moreover, the feeling or action required is sufficiently negligible as to morally inert. Even if the W-features remain stable in their value in large ratio cases, then, they are so heavily outweighed that they no longer actually have sufficient ‘force’ to move the moral requirements of an actor in the large ratio cases. There is then ample reason to think that the force is no longer operative in the case(s).⁵⁹

Hero cases are fantastic (and Hawkeye’s lack of powers only makes his proposed fictional heroism even more fantastic) but there is a wide range of cases between Missed Meal and Heartbreaker Hawkeye. The spectrum could be wider to accommodate contrary intuitions about Hawkeye and my non-case-based claims in the preceding paragraphs. Somewhere along that spectrum is the point where traces are no longer present. That point is likely best located by identifying the R-feature:W-feature ratio that makes the trace requirements negligible.

Identifying the precise ratio will be difficult and warrants (yet) another article but does not defeat the argument for the Ratio Condition. To understand the complication and how it does not undermine my proposal, it is helpful to consider a case that could challenge my view:

Very Wide Train Tracks: In a variation of the Trolley Problem, you are put in a position where you are provided with the opportunity to switch a train off a very wide set of train tracks on which 500 persons have been tied onto a set of tracks on which only 1 person is tied. You choose to switch the train.

⁵⁹ One could argue that the value of the W-features themselves changes according to the context of choice. This introduces myriad complexities beyond the scope of this work. The point here is more modest: a force may present, but nothing would follow from that and we should not be worried when we are not moved by it.

Suggestions that this is an all-things-considered rightful action and you should provide some explanation and perhaps even an apology to the family of the individual who dies in this case are plausible.⁶⁰ Many have the same intuitions in cases in which the tracks are even wider and contain 5000 persons. I think that the number of people who share the intuition at 5000 would be less than the number who share it at 500, which would be less than the number who hold it at 5. This alone seems to count in favor of something like a Ratio Condition. Despite these reservations, I accept that the fact that the intuition is common and plausible at 5000 might undermine the Ratio Condition. Yet I suspect that lingering competing intuitions at 5000 have more to do with the weightiness of the W-feature of the death-causing acts in these cases than it does with the inadequacy of the Ratio Condition generally. It may simply be the case that the W-feature of killing a human being is very great and that the weightiness is widely asymmetrical with the weightiness of the R-feature of saving a human life such that the ratio needs to be very great indeed before the R-feature will not and should not be felt by individuals.

A complete account of this substantive argument (again) requires its own article, but the general observations that this explains our intuitions about the cases above, different rights and wrongs have different values such that, for instance, killing is usually seen as worse than promise-breaking, and asymmetries are already common in ethics, jointly provide reason to accept the general picture here rather than jettisoning the plausible Ratio Condition.⁶¹

This solution to the potential objection complicates the Ratio Condition, but it does not undermine it. If the forgoing solution to the objection succeeds, then R-features of different kinds

⁶⁰ This case differs from the agent-sacrificing cases in Hurka & Shubert, *supra* note 34 that those authors state are not the best cases for trace analysis and may not require traces in at least the standard models. Where even Hurka & Shubert suggest that the possible agent-favoring trace condition they promote is ad hoc, I do not want to assume it here even if one does not think that there is a relevant distinction between trolley and agent-sacrificing cases. Early readers of this work used trolley cases to challenge my view. I think they help illuminate relevant issues.

⁶¹ For an interesting piece on one kind of asymmetry by someone who has also written on topics discussed in this piece, see Thomas Hurka, "Asymmetries in Value" 44(2) (2010) *Nous* 199.

of W-features and R-feature have different weights. R-feature:W-feature ratios accordingly cannot be calculated by looking at the presence of each kind of feature simpliciter; one must also look at the relative weight of each feature.⁶² If it is the case that the W-feature of killing is much weightier than the W-feature of promise-breaking and the R-feature of promise-keeping is much weightier than the W-feature of beneficence, our moral calculus will get complicated quickly. Such findings are, however, consistent with our initial understanding that some duties are more stringent than others. If different classes of duties have different weights, we should not be surprised that the value of fulfilling different kinds of duties (and even different examples of the same kinds of duties insofar as not all beneficence is equal) may differ.⁶³

Thus, while the most obvious objection to the Ratio Condition suggests that implementing the Ratio Condition may require more fine-grained weighting of W-features and R-features than I provide here, it does not undermine the case for the Ratio Condition so much as it provides further insight into the nature of traces that should prove useful for future research. Different weights raise a host of complications beyond the scope of the present inquiry that should be resolved elsewhere. There may even be bands of acceptable ratios, which vary as the weight of W-features and R-features differ. The W-features of a case where the W-features involve intense physical harm (e.g., a torture case) may be so qualitatively different from W-features that do not involve physical harm as to require their own category in a new band with a higher ratio requirement. Future work should clarify this. It suffices here to note that there is reason to require the Ratio Condition for traces and admit that more work is needed to precisely

⁶² Trolley cases are legion. The locus classicus remains Philippa Foot, "The Problem of Abortion and the Doctrine of Double Effect" (1967) 5 *Oxford Review* 1. I thank [redacted] for pushing my initial responses to such problems.

⁶³ The underlying concern with weights also explains why I discuss the Ratio Condition in terms of the total value of the relevant features rather than their bare presence alone. I thereby build potential consistency into my definition. Recall note 22.

specify the exact ratio or set thereof required for a trace to remain. While I cannot identify exactly the ratio that makes trace requirements dissipate, *a* Ratio Condition, combined with the Non-Consequentialist Duty and Identity Conditions, makes sense of when they are present.

Moreover, to the extent that my claim that the Ratio Condition is necessary for traces to exist is false, it is false in an interesting way that can further future philosophical work on traces. If that claim is false, either (a) the case for traces can violate ‘ought implies can’ where the ratio is so great that one could not physically feel the force of the greatly outweighed W-feature or (b) no combination of W-features can be so great so as render one incapable of feeling the force of another. Either result would be interesting and would create paths for further research. (a) would challenge the existence of traces or of ‘ought implies can’. (b) would offer insights into the nature of pro tanto duties and how to weigh moral features in a moderate deontologist view. While it could have several implications, it most obviously suggests that either (i) people can always experience W-features or (ii) there are limits on the extent to which features can be added to a situation in a normatively weight way. Both would be surprising findings. (ii) is more compelling insofar as it reflects the finding in pluralist axiology whereby all values have ‘caps’ on the extent to which they can add to or detract from the all-things-considered goodness of a situation that could be paralleled here.⁶⁴ But little turns on that. The key point is that championing the Ratio Condition is important even if the condition is unnecessary: the failure of my argument for it will help clarify understandings of traces and moderate deontology.

A Problem Case

There are, then, reasons to accept the existence of traces and one can identify necessary conditions for when traces remain. While I addressed potential issues with each of my conditions

⁶⁴ See Larry S Temkin, *Rethinking the Good: Moral Ideals and the Nature of Practical Reasoning* (Oxford: Oxford UP, 2011) ch 10 (though Temkin himself expresses ambivalence about when and how often caps are necessary).

as I introduced them above, one may remain concerned that traces are implausible even when all three of these conditions obtain. In this final substantive section, I use a problem case to illustrate the different forms that this lingering concern can take and why the concern does not constitute a persuasive objection to my view in any of its forms. I then briefly explore the implications of the best solution to this potential problem for the structure of traces.

By way of illustration, consider:

Bleeding Out: Douglas borrows a car from Natalie and promises to return it in proper working order. Douglas finds Stefan bleeding out by the side of the road after a ‘hit-and-run.’ Douglas picks Stefan up and drives him to the hospital. Despite attempts to stop the bleeding on the side of the road, blood continues to pour during the trip to the hospital. Hospital staff save Stefan, but the backseat of Natalie’s car is ruined. Natalie recently refurbished her interiors with rare imported materials that are now both functionally necessary for regular backseat operations and soaking into the blood of the rescued individual. Replacing the necessary components of the backseat is expensive.⁶⁵

This case shares features with Feinberg’s hiker case, but the third party beneficiary differs and the costs of full compensation are supposed to be much higher than some meals and firewood.⁶⁶

These differences likely explain why several persons with whom I have discussed trace conditions question the plausibility of necessary compensation in Bleeding Out. Douglas has saved a life! Holding him responsible for expensive repairs is a poor way to recognize this.

I discussed Bleeding Out’s third-party beneficiary element above, but cost-related intuitions that Douglas owes no duty to Natalie require analysis. The underlying concern takes two forms. First, compensation seems overly demanding in this case. Paying for expensive repairs when you do the right thing seems to ask too much. Where the over-demandingness of some forms of consequentialism and absolute deontology are motivating factors behind moderate deontology, this would be an unhappy result. Second, a need for compensation could create

⁶⁵ This is a variation on a case from [redacted].

⁶⁶ Imagined costs beyond those of the dock in note 2’s case raises expensive taste concerns. I bracket them here.

perverse incentives that would lead people not to perform all-things-considered rightful actions. If one knows that doing the right thing would make him or her (at least morally) liable for spending large amounts on a replacement, one may simply fail to do the right thing.

Easy solutions to the potential problems with Bleeding Out do not seriously address its underlying concerns, but neither concern decisively undermines the case for traces or my proposed trace conditions. Easy solutions deny that there is a deontological duty not to harm the backseat in the case and/or suggest that the destruction of the backseat is a bad-making feature of the act, rather than a W-feature (viz., while the effect is bad, there is no wrong here since there was no pro tanto right violation). While the latter easy solution is a promising approach to Bleeding Out, neither adequately addresses the concerns underlying the case. A similar case with a clearer wrong in which Douglas personally destroys upholstery to create a crude sling for Stefan produces the same results. Moreover, over-demandingness and perverse incentives concerns remain even if the cases used to motivate them do so only imperfectly anyway.

Fortunately, these over-demandingness and perverse effects concerns still do not undermine the case for a well-constituted moral trace that only exists where the conditions above obtain. The over-demandingness concern only arises when necessary compensation is great. Such compensation will arguably only be necessary where the ratios between W- and R-features are high (but not so high as to violate the Ratio Condition). Demanding duties of compensation will not arise in the typical case. While the monetary value of compensation in Bleeding Out is high, the compensation demanded need not be identical to the full price of the original upholstery, particularly if the R-feature is not a major one. Compensation is not full correction.

Recognizing this fact also partially negates perverse effects concern, which is also vitiated by the fact that at least most moral systems sometimes require one to act in ways that are

not practically rational. Indeed, morality is partly necessary because our motivations will lead to sub-optimal results and affect others in e.g., harmful ways. The trace is not unique in creating moral demands that may lead one not to act morally. Other moral phenomena may, moreover, offset the cost Douglas would have to pay, minimizing the worst excesses of the case; the fact that Natalie too would have owed a duty to help Stefan had she been driving and only did not come across him due to luck may justify Natalie's contribution to the car's repair.⁶⁷

Less abstractly (and likely more persuasively), understanding trace requirements as disjunctive and/or accepting the ecumenical view of compensation above addresses both concerns motivating Bleeding Out. This solution has interesting implications for some of the non-trace conditions-based debates about the structure of the trace. While some persons question the necessity of compunction in Bleeding Out, I find the claim that compunction is implausible difficult to accept. More importantly, requiring ill-feeling is certainly not over-demanding and it is hard to see how it will lead to perverse effects. A disjunctive view requiring only ill-feeling seems not to run into the concerns in this case or some cases above. It avoids them even in cases where there many weighty W-features, like Polluting Factory. It is plausible that the ill-feeling required there is great and will lead the factory owner to lose sleep for a long time. This is acceptable. It should not (and likely will not) lead him to close the factory.

The ecumenical view on compensation also vitiates over-demandingness and perverse effects concerns. Compensation is plausible in Bleeding Out (and similar cases) where explanation is a form of compensation. Few think Douglas should not explain the damage and

⁶⁷ I thank [redacted] for discussion of this point. The trace would remain here, requiring Douglas to pay compensation of some kind. But Natalie could be under an obligation to mitigate Douglas's losses. A full argument for this approach is also beyond the scope of this work. It suffices here to note that traces can interact with other relevant moral phenomena and that this interaction may offset the worst of objections to Bleeding Out.

one's knowing one must explain oneself will rarely explain failure to act morally. As noted above, disjunction and a broad view on compensation also explain some of my other cases.

The motivating concerns behind Bleeding Out, then, are not objections to the existence of traces or my trace conditions, but addressing those concerns suggests that traces are best understood as disjunctive and/or as entailing compensation that can take a variety of forms beyond full rectification. Fulfilling the trace requirements may not undo all bad effects of all-things-considered rightful action. The car may remain in disrepair in Bleeding Out or variations thereof (especially absent additional moral phenomena that could minimize Douglas's compensation requirements). But compensation and compunction largely offset the wrongs in these cases. Understanding when those wrongs remain in a situation and require response is important. I presented a plausible case for their continued existence above.

Conclusion

The identification of necessary conditions for traces should help us better understand when we are under an obligation to feel queasy and/or provide compensation to others even when we do the right thing. I identified three such necessary conditions above: The Non-Consequentialist Duty, Identity, and Ratio Conditions. The best arguments for the existence of traces and particular trace conditions suggest that trace requirements are disjunctive, but my proposed trace conditions can obtain even on a conjunctive view. While one can critique each necessary trace condition that I identified and the Ratio Condition complicates the moral landscape, I provided arguments for and discussed potential objections to each proposed trace condition above. If traces exist, it appears that they only exist when my trace conditions obtain.