



# How Deontologists Can Be Moderate (and Why They Should Be)

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## 1 Introduction

A series of nuclear devices is about to go off that will kill every inhabitant from Washington D.C. to Boston. Janik discovers the plot and learns that the bomb can be deactivated only by accessing a detonator placed inside an innocent bystander. The detonator has been placed so that it cannot be retrieved without killing the innocent.

Meanwhile, on the West Coast, five innocent people are dying; each needs an organ transplant to survive. Leona, a surgeon at the hospital, stumbles upon the chart of an innocent, healthy patient, visiting for a routine check-up. This sixth patient is a perfect match for each of the five dying patients.

Ought Janik kill the innocent bystander to save millions of lives? Ought Leona kill the innocent patient to save her five dying patients? According to absolute deontologists, both Janik and Leona are constrained from killing an innocent person, regardless of any good it might do. Persons are never to be treated as means to some other end, even if that end is saving half of the U.S. Eastern Seaboard. Moderate deontologists are moved by the plausibility that Leona is morally constrained from killing the healthy innocent in order to save five dying patients. However, the moderate finds it implausible that it is wrong for Janik to kill a single innocent bystander in order to save millions. Persons are not to be treated as a mere means, but in extreme situations, such as in Janik's case, a so-called threshold has been met, such that agents may permissibly infringe the constraint against killing innocent persons.<sup>1</sup>

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<sup>1</sup> See, for instance, Judith Jarvis Thomson, *The Realm of Rights*. Cambridge: Harvard University Press, (1990); Samantha Brennan, "Thresholds for Rights." *The Southern Journal of Philosophy*, 33, 143-168 (1995); Samantha Brennan, "Moderate Deontology and Moral Gaps." *Philosophical Perspectives*, 23, 23-43 (2009); and, Tyler Cook, "Deontologists Can Be Moderate." *Journal of Value Inquiry*, 52, 199-212, (2018).

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One worry is that the moderate position will ultimately collapse into a consequentialist one.<sup>2</sup> Insofar as Janik is morally permitted to act, it might seem that consequentialist considerations of promoting the good outweigh the deontological considerations of respecting persons in these cases. At best, as Saul Smilansky argues, the moderate is left with a pluralist view; at worst, she is simply a consequentialist who holds that the deontological principle of respecting persons is just a weighty moral reason that can be outweighed just like any other in a consequentialist framework.<sup>3</sup> Recently, Tyler Cook presented a compelling case that deontologists *can* be moderate.<sup>4</sup> However, his response lacks a clear story concerning *how* such a view might function, and importantly, *why* a deontologist might (or perhaps, should) hold the view.

Here, I aim to fill these gaps. In §2, I construct a moderate position that allows for thresholds while avoiding a collapse into consequentialism. I begin by discussing the nature of a constraint that admits thresholds. I work to show that there is conceptual room for a view that holds an agent is constrained from an action, even in those instances in which an infringement of such a constraint is permissible. This account of constraints appeals crucially to the moral emotions apt to accompany constraint infringements. I then show, in §3, how such a view is motivated by traditional deontological motivations. Respect for the dignity of persons, I argue, requires not only that we not treat others in certain ways, but also that we acknowledge the direct and indirect effects our actions and inactions have on all persons. This deontological motivation, in turn, leads to a moderate constraint on the actions of agents.<sup>5</sup>

## 2 How Deontologists Can Be Moderate

The first issue facing us is simply what moderate deontology amounts to. J.J. Thomson helpfully introduces a distinction between violating and infringing a right.<sup>6</sup> Right, or for our purposes, *constraint* infringements encompass all cases in which an agent has acted contrary to a constraint, permissibly or impermissibly. This contrasts with violations, which include only those infringements that are morally impermissible. For absolute deontologists then, all constraint infringements are violations. By

<sup>2</sup> See, for instance, Larry Alexander, “Deontology at the Threshold.” *San Diego Law Review*, 37, 893-912 (2000: 904) and Eyal Zamir & Barak Medina, “Threshold Deontology and Its Critique” in *Law, Economics, and Morality* New York: Oxford, 41-56, (2010).

<sup>3</sup> For a defense of moderate deontology as a pluralist view, see Saul Smilansky, “Can Deontologists Be Moderate?” *Utilitas*, 15(1), 71-75, (2003).

<sup>4</sup> See Cook, op. cit.

<sup>5</sup> Insofar as there is a dearth of literature on these issues, my primary goals in this paper are to show that moderate deontology is both coherent and deontologically motivated. For discussions as to where thresholds might lie, see Thomson, op. cit., Brennan, op. cit., and my “A Framework for Thresholds” (manuscript).

<sup>6</sup> See Thomson op.cit. Note, that this is similar to Nozick’s notion of boundary crossings. See Robert Nozick, *Anarchy, State, and Utopia*. New York: Basic Books, (1974). Excerpt “Side Constraints,” reprinted in *Consequentialism and Its Critics*. Ed. Samuel Scheffler, New York: Oxford (1988). I stick with Thomson’s notion insofar as it is most commonly used in the threshold literature.

contrast, moderate deontologists argue that some constraint infringements are permissible, and so not all constraint infringements are violations.

This terminology is helpful as it allows us to articulate an important aspect of the moderate deontologist's view. At the point of a threshold, it is not the case that a moral agent is no longer constrained from killing. That is, whether a threshold has been met or not, the constraint still applies. Otherwise, if these constraints are simply inactive when other considerations arise, it seems, as Larry Alexander notes, that moderate deontology "treats those whose sacrifice can save the endangered as expendable resources once the threshold is reached."<sup>7</sup> The challenge of justifying a threshold, then, can be redescribed as establishing why some constraint infringements are permissible, while others are violations.

The first challenge for such a view concerns coherence, i.e., how is it that a constraint can admit to both permissible and impermissible infringements? In what remains of this section, I will show *how* a deontologist can maintain that a constraint infringement is in some sense wrong, or for my purposes (denying that the infringement is indeed wrong), how the constraint in some sense remains active, when it is the right action to perform. In particular, I will identify what I consider to be a moral remainder as evidenced by certain moral emotions one is apt to feel in threshold situations. I then turn, in the following section, to the issue of dispatching with consequentialist considerations. There, I argue that respect for the dignity of persons requires more than simply constraints on our actions. It requires, moreover, that we acknowledge the lives for whom our actions will have a negative effect, and figure those individuals into our moral deliberations in a meaningful way. This acknowledgment, I argue, sets the threshold for the moderate, in a thoroughly deontological way.

Turn now to our first challenge. In what way is a constraint present when it is permissibly, or perhaps obligatorily, infringed? Consider two cases.

**The Entrepreneur:** Claudia is a rather wealthy entrepreneur. She discovers that if she gives a million dollars to an incredibly efficient charity (which would not be a significant dent in her fortune), she will save 10,000 lives. Indeed, she learns that these particular 10,000 people will certainly die if she does not act now.

**The Bystander:** A bomb is about to go off that will kill 10,001 people. Janik, again, discovers the plot and learns that the bomb can be deactivated only by accessing a detonator placed inside an innocent bystander. The detonator has been placed so that it cannot be retrieved without killing the innocent.

Suppose that the correct moral theory is a moderate deontology that requires both Claudia and Janik to act. In each case, the agent is morally required to perform an action so that a net of 10,000 lives will be saved. However, it seems to me that this is where the similarities in the cases end.

Consider first Claudia's case. Imagine that Claudia is excited that she is able to save these 10,000 lives. She is proud of her actions. Claudia does not hesitate nor

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<sup>7</sup> See Alexander, *op. cit.*

does she give the money only reluctantly. Claudia does not experience a kind of mourning period over having to give up this small portion of her fortune. She acts without hesitation, with pride and passion. If this were how Claudia behaved, we would praise her moral character.

Consider now Janik. Imagine if Janik felt about his case, the way we imagined Claudia did. Imagine that Janik is excited at the opportunity to save these lives. He acts without hesitation, with pride and passion. In this case, we would be deeply concerned with Janik's moral character. He is required to kill an innocent person. We typically think Janik *should* hesitate. He should recognize the gravity of what is morally required of him. Janik should perform this act somewhat reluctantly. Of course, he might feel pride at overcoming that reluctance and saving a net of 10,000 lives. But, we would expect a mourning period. We would hope that Janik in some way regrets that this is the only way those lives could be saved. We would further expect Janik to try to somehow memorialize the life he was required to take.

The key to characterizing the way in which an agent remains constrained in threshold cases is to tease out the moral residue leftover in Janik's case above. Although I provided a general characterization of how one might react to Janik's excitement in his case, it is still an open question exactly what sentiments are appropriate for Janik to feel, and how they are related to our judgments of his character, as well as the implications for the deontic status of the action. On my view, there is a certain moral emotion that is fitting for Janik, and others, to feel in cases of permissible constraint infringements, which points us to a moral residue in threshold-meeting cases. In particular, these cases require agents to compromise the dignity of others. This is the moral residue, which requires Janik to respond differently from Claudia in the above cases. The fittingness of this response captures the normative force of a constraint in threshold cases. Insofar as this particular moral emotion is fitting, those of good moral character will experience it, while those that do not may be open to moral criticism.

To get clear on the emotion I have in mind, it is helpful to begin with Bernard Williams's notion of agent-regret.<sup>8</sup> Williams's focus is primarily on how an agent ought to feel in cases of moral luck. He has us imagine a lorry driver, who by no fault of his own, runs over a young child. Williams finds that neither remorse nor regret seem appropriate. On the one hand, remorse seems to imply that the agent acted voluntarily, that he finds himself fully culpable and blameworthy for the action, which seems too strong a reaction in the lorry driver case. On the other hand, mere regret is something that anyone might feel. Regret simply involves wishing that things could be otherwise. However, according to Williams, it is appropriate for the lorry driver to feel a special weight in the case insofar as he is importantly the cause of the misfortune. Williams, thus, introduces what he calls agent-regret. Agent-regret involves "something special about his relation to this happening, something

<sup>8</sup> See Bernard Williams, "Moral Luck," *Proceedings of the Aristotelian Society, Supplementary Volumes*, 50, 115-125 (1976); Bernard Williams, *Moral Luck*. Cambridge: Cambridge, (1981); and Bernard Williams, *Shame and Necessity*. Berkeley: University of California Press (1993).

which cannot merely be eliminated by the consideration that it was not his fault.”<sup>9</sup> Third-parties may regret a situation, they may wish things to have gone otherwise, but they are comforted in the knowledge that they were not at fault. Moreover, agent-regret is expressed differently from mere regret, insofar as “[t]he lorry-driver may act in some way which he hopes will constitute or at least symbolize some kind of recompense or restitution.”<sup>10</sup>

Agent-regret is a close analogue to what I think is appropriate in Janik’s case above. Just as in the lorry driver case, it is important to appreciate the agency involved in threshold cases. However, the cases differ in that unlike the lorry driver, Janik acted voluntarily in killing the one. Indeed, it was his *intention* to do so. Despite this difference, Williams does suggest other, seemingly voluntary, cases in which agent-regret is apt. For instance, he discusses the case of Agamemnon, who sacrificed his daughter to the gods for the sake of his fleet.<sup>11</sup> Just as with the lorry driver, Williams suggests that agent-regret is appropriate for Agamemnon to feel. Thus, agent-regret, on Williams’s view, might be equally appropriate.

However, I think it is a mistake to group these cases together. A willing and knowing sacrifice of another, whether it is to serve some greater good or not, differs importantly from an involuntary case of bad moral luck. Perhaps it is bad moral luck that Agamemnon found himself in such a case, but it was not a matter of bad moral luck that the action he took resulted in the loss of his daughter. That sacrifice was a choice, unlike the lorry driver’s case. Similarly, Janik chooses to sacrifice the one to deactivate the bomb. Regret, even agent-regret, does not, to my mind, fully capture the weight of those choices, morally correct as they may be. Rather, it seems that when it comes to voluntary actions, remorse of some kind is appropriate.

The problem is that just as mere regret will not capture the lorry-driver, it does seem that mere remorse will not capture Janik or Agamemnon. In describing ordinary remorse above, the voluntary nature of the act was mentioned, but so too was the implication of responsibility and blameworthiness. Indeed, one might suggest that to say that remorse is apt implies that the act committed was wrong. Even if this is not your immediate intuition as to the nature of remorse, I think it is important to distinguish between the apt response to an act that is morally right and to one that is morally wrong. Although it may be apt to feel a sense of remorse after choosing to engage in an affair, I submit that the sense of remorse apt for Agamemnon and Janik differs.

This leads me to what Stephen de Wijze introduces as *tragic-remorse*.<sup>12</sup> Tragic-remorse, on de Wijze’s view focuses on “dirty hands” situations, of which he writes, “an agent must do wrong in order to do right...This involves the willing endorsement of an action that is morally repulsive...yet, all things considered, is still his

<sup>9</sup> See Williams, op. cit. 1976: 124.

<sup>10</sup> Ibid. p.124.

<sup>11</sup> See Williams, op. cit. 1993.

<sup>12</sup> See Stephen de Wijze, “Tragic-Remorse – The Anguish of Dirty Hands.” *Ethical Theory and Moral Practice*, 7(5), 453-471 (2005).

moral duty and cannot be avoided.”<sup>13</sup> To get clear on the emotion, de Wijze considers a case of a Prime Minister wholeheartedly against torture faced with a ticking time bomb situation. He writes:

To feel mere regret about this state of affairs would fail to do justice to the serious moral violations the Prime Minister has committed while to feel remorse would falsely suggest that she had no moral justification for her actions. Agent-regret will not do either since it is not merely the fact of her causal role in the event that is problematic, but her willing endorsement of a moral violation.<sup>14</sup>

This leads us to tragic-remorse. By recognizing the emotion as a species of remorse, one takes on the full weight of the action performed. The agent does not merely take on a responsibility that is not his. Rather, he appropriately feels that the responsibility truly is his. Insofar as that responsibility persists and the agent is the cause of harm to a person, reparations are often appropriate. At the same time, we do not think that the agent should have acted otherwise, or ought to reform her character. The emotion of tragic-remorse is marked by feelings of guilt and shame, but also pride and anguish.<sup>15</sup> The latter feelings distinguish the emotion from ordinary cases of remorse. In these feelings of pride and anguish, the agent feels the tragedy of the situation, while acknowledging the moral necessity of the act.

Although tragic-remorse seems to perfectly capture what I argue Janik ought to feel, there is one characteristic of de Wijze’s account of tragic-remorse that I reject. On de Wijze’s view, tragic-remorse involves an acknowledgment of wrong action. However, on my view, when a threshold is met, an agent does not perform a wrong action. Ultimately, I think our dispute is terminological. While de Wijze requires that the action one feels tragic-remorse towards is wrong, he also suggests that the action is right. Indeed, the very cases he has in mind, he characterizes as cases in which “a person is forced to do wrong in order to do right.”<sup>16</sup> It seems then, that “wrong” here is simply acknowledging that a constraint is infringed, or that another person is in some way directly harmed. Insofar as he characterizes the case as one in which right was done, our views do not seem problematically different. However, even if there is an important difference between them, I submit that tragic-remorse is equally appropriate in the cases I have in mind.

To further the case for tragic-remorse, it is helpful to consider a phenomenologically similar, though possibly non-moral analogue. If we experience a similar emotion in other cases, it lends credibility to the claim that tragic-remorse is more than a moral construct. Consider then the feeling a parent experiences when she must dole out a dose of tough love to her child. Parental duties ordinarily require that a parent avoid causing one’s child any pain; however, there are times when further parental

<sup>13</sup> Ibid. p. 463.

<sup>14</sup> Ibid. p. 464.

<sup>15</sup> Ibid. p. 467. Note the difference here between “emotion” and “feeling.” The emotion of tragic-remorse involves a complex phenomenology, which includes a *feeling* ordinarily associated with the emotion of guilt. However, this is not to say that the *emotion* of guilt is fitting.

<sup>16</sup> Ibid. p. 454.

duties necessitate small amounts of pain in the short term, e.g. a child sitting in time-out or being grounded. It is fitting for a parent to feel a sinking remorseful feeling, when she must perform such acts. However, the feeling differs from when she has simply made a mistake. She knows that her action in this case is necessary, and that necessity changes the nature of the remorse.

The difference of course is that we rarely find tough love, at least expressed by a parent to a child, to be morally problematic (supposing, of course, that genuine tough love excludes cases of abuse). After all, children might require such lessons. Thus, one might wish to distinguish the parental emotion described from tragic-remorse, insofar as it lacks the same moral tint. For my purposes, I find it plausible that the parent case is indeed morally parallel. The parent-child relationship is a moral one, which includes a number of duties that might conflict. It may be that a tough love situation is characterized by a moderate deontologist as a case in which a threshold against minimally harming one's child has been met. Of course, the absolutist that wishes to make room for tough love of children will likely point to differences in our responsibilities and constraints when it comes to the parent-child relationship. I do not here intend to settle the debate. I simply wish to point out that the moderate deontologist has an elegant story to tell. Cases in which we find it morally permissible to treat a child in a way we otherwise would not, seem parallel to threshold cases in structure, as well as emotional response.

Pointing out that tragic-remorse is an emotion we experience that indeed differs from remorse, regret, and agent-regret, says nothing yet about its relationship to constraint infringements, nor how the emotion might contribute to a moderate deontologist's understanding of threshold cases. With tragic-remorse on the table, I turn now to those issues. The goal, recall, is to characterize the moral residue leftover when an agent performs a permissible constraint infringement in a threshold case. The claim is that the presence of such moral residue represents the normative force of the constraint in such cases, as well as a continued respect for the patient sacrificed in the threshold case. In this way, contra Alexander, persons do not become expendable resources once a threshold has been met.<sup>17</sup>

On my view, it is appropriate in the case of all constraint infringements to feel some sort of remorse. When the constraint infringement is impermissible, the emotion appropriate is the ordinary sense of remorse, while in threshold cases, when the constraint infringement is permissible or required, the type of remorse appropriate is tragic-remorse. Ordinary remorse, it should be admitted, might be felt in other cases depending on one's view of moral obligation. It might be that an agent has a positive moral obligation, which she fails to meet through an act-omission. In such cases, remorse may also be apt. What is key is that remorse is the appropriate response to moral wrongdoing. Tragic-remorse, then, is the appropriate response when an agent performs an ordinarily remorse-apt act, in a tragic and morally necessitated case. While the act was morally necessary, it remains the case that the dignity of a person was compromised. This is the moral residue to which tragic-remorse is the fitting

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<sup>17</sup> See Alexander, *op. cit.*

response. While my focus has been on acts, it is worth noting that a moderate deontologist could argue that an act-omission case might arise that is parallel to ordinary threshold cases. If that were the case, then it is plausible that tragic-remorse would likewise be apt. Again, the agent would find herself in a case in which an ordinary moral wrong would be morally required of her.

On my view, that remorse of some kind is apt is a unifying feature of constraint infringements. That tragic-remorse remains apt in threshold cases represents the way in which an agent is able to continue to respect the victim of the permissible constraint infringement. In order for remorse to do the work I need it to, it is important that remorse and tragic-remorse are appropriate exclusively in such cases, at least within the moderate deontologist's framework. Of course, similar cases may arise that engender similar emotions. However, we can see that within the moderate deontologist's framework, without a constraint infringed or some other moral obligation not met, remorse, of either type, is not appropriate. For instance, suppose that I unwittingly harm my wife. In this case, I might feel a phenomenologically similar pang as I would have had I done so intentionally. However, it does differ. The unwitting nature better fits the agent-regret of Williams' lorry driver. I take on the responsibility, but insofar as the harm was unintentional, the same sense of blameworthiness is not fitting.

The question now is in what way does the fittingness of tragic-remorse provide normative force? Tragic-remorse, on my view, is a moral emotion. It is a fitting response to threshold situations, such that those of good moral character will feel it when faced with those circumstances. Moreover, it is appropriate to judge negatively those that do not respond accordingly. Whether it is a mark of an ill will or a vicious character, an agent who does not feel moral emotions when it is fitting to do so is morally criticizable. It is in this way that the fittingness of tragic-remorse also represents a moral string attached to an agent's permissible constraint infringement.

One way of thinking about the moral string is to point to Kant's distinction between acting *in accordance with* duty and acting *from* duty. Here the idea would be that, while the right thing to do, killing the one without feeling tragic-remorse would fail to achieve the full moral worth of the act. This general story is attractive; however, it may need to be slightly modified depending on one's interpretation of Kant. Not only is the agent morally criticizable for failing to feel appropriate moral emotions, as was mentioned already, the agent also fails to fully respect the person whom she was required to harm. Perhaps that just is the moral worth of the act, but as I will argue next, expressing respect for all persons is the key to justifying moderate constraints. Thus, in failing to fully respect a person, through both one's actions and one's moral emotions, one fails to fully meet one's moral obligations. I do maintain that the act is permissible, regardless as to whether one is able to meet the full obligation of respect. Moreover, it is one's duty to kill the one. In this way, my view seems to take on something resembling Kant's distinction. I simply maintain that threshold cases require more than mere action in order to fully respect persons.

Where does this leave us with respect to characterizing permissible constraint infringements? On the moderate view currently on the table, one is constrained from an action, even when such an action is recommended, insofar as there is a moral



string attached in the form of appropriate moral emotions. Whenever a constraint is infringed, some species of remorse is appropriate. The fittingness of tragic-remorse in particular is an acknowledgment that thresholds involve a morally complex situation, one in which an agent is required to act in ways ordinarily impermissible. Though morally required to do so, threshold-meeting cases require an agent to compromise the dignity of another, leaving a moral residue for which feeling tragic-remorse is a fitting response. Tragic-remorse does not affect the choiceworthiness of the act, but it allows for a certain kind of respect toward the moral patient in the case, reaffirming the tragic nature of threshold cases.

In contrast, unconstrained actions are ones that agents may perform freely. For our purposes, that freedom amounts to being free from particular negative moral emotions. In ordinary cases, no remorse of any kind is apt. As we have seen, there may of course be cases that justify other moral emotions such as regret. However, on my view, recall that regret is appropriate primarily in cases in which one did not voluntarily cause harm. Even the lorry-driver was unconstrained in his action. Any moral strings attached in these cases will be a result of consequences outside of one's control.

None of what I have said thus far is an argument for the inclusion of thresholds. It might be that consequentialists can capture the same results, or that these are results deontologists should avoid. All I have argued for thus far is that there is a way of understanding constraints that allows for permissible infringements. This was the first challenge for the moderate, showing that the view is coherent. I turn next to the second challenge, i.e. showing that the view is well-motivated by core deontological principles.

### 3 Why Deontologists Should Be Moderate

With a better grasp of what exactly moderate deontology is, we are now in a position to consider the motivations for such a view. It is not enough to show how a moderate view works, we must also show that such a view is justifiable from the deontological point of view. Absolute deontologists and consequentialists alike have raised doubts about such an endeavor.<sup>18</sup> Absolute deontologists hold that constraints are absolute, i.e. they can never be permissibly infringed. Their charge against the moderate deontologist varies, but two prominent complaints are (i) that the moderate, in conceding that consequences can outweigh constraints, has conceded that consequences are really the moral bottom line, thus giving up deontology, and (ii) that the moderate does not properly respect the dignity of persons, insofar as her view treats one's dignity as something that can be weighed against the good (or in some way infringes whatever other motivation the deontologist might have for defending constraints). We have already seen how a moderate conception of constraints may be able to

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<sup>18</sup> See for instance, Alexander op. cit.; Nanc (Ann) Davis, "Contemporary Deontology." In *A Companion to Ethics*. Ed. Peter Singer, Oxford: Blackwell (1991); and, Charles Fried, *Right and Wrong*. Cambridge: Harvard (1978).

respect dignity after all. The recognition of the nature of tragic-remorse allows us to understand how moral agents can feel the genuine weight of their actions throughout their deliberations, their action, and in the aftermath, in a way that both constrains their action and shows respect for the person whose sacrifice was morally necessitated. It remains to be seen, however, whether deontological foundations lead to such a view, as opposed to absolutism. Many consequentialists, likewise, agree that the moderate has in some sense conceded to consequentialism. They suggest that insofar as moderate deontologists admit that the good may indeed override a constraint or one's rights (whether it is by "outweighing" or simply meeting some threshold), the moderate admits that the goodness of consequences indeed takes precedence over considerations of rightness. Once consequences are given priority, the moderate has conceded to the consequentialist. Thus, the task in front of us is to show how moderate deontology may indeed be justified as a genuine deontological view.

The clear place to look for a justification or foundation for a moderate deontological view is traditional deontological foundations. Deontologists typically argue that rights or constraints are generated via a concern for respecting the dignity of persons, which is often cashed out in terms of our capacities for rationality and autonomy. Why is it impermissible to push the fat man off the footbridge? Well, because the fat man is a person, and respect for his personhood requires that we treat him as an end in himself and not merely as a means to some further good. Different versions of this story can be told, but for my purposes, so long as the foundation is some sort of respect for persons, we will end up with the same result.

Let us now attempt to justify a moderate deontology based on this traditional deontological foundation of respect for dignity. There seem to be two possible strategies. First, we might try to argue that while dignity generates constraints, there is some *other* moral consideration that imposes limits on them. Alternatively, we might try to argue that there is something about dignity itself that generates constraints or rights that are not absolute.

Consider first the approach that takes into account multiple moral factors. Indeed, Kant suggests something similar in his treatment of friendship. The norms of friendship, he maintains, are structured by the integration of the duties of both love and respect. Here, the idea is that while concern for human dignity generates stringent rights and therefore deontological constraints, concern for, say, human welfare, generates limits to those rights. This approach stems immediately from the very idea of a threshold. A moderate constraint is impermissible to infringe until the amount of good that would be done by infringing it reaches a threshold. It is the good that might be done that is at issue, and so it seems that that very goodness would justify the infringement of the constraint. Moreover, the argument goes, concern for human welfare is nothing new for, at least some, deontologists. After all, if saving lives does *not* require infringing rights, deontologists often maintain that one ought to save lives. According to this view, the absolute and moderate deontologists can agree on the importance of human welfare; the disagreement simply lies in how those moral factors are weighed.

An immediate concern for this view is that deontologists need not explain their preference for saving lives in terms of the promotion of welfare. While this may make deontologists less inclined to go this direction, it does not alone count the

view out. Even if deontologists are not ordinarily in the habit of pointing to welfare in their moral explanations, it does not mean welfare cannot count in the moderate's extreme threshold cases.

Instead, my main concern with this approach is that although many deontologists do consider welfare in their moral calculations, many traditional deontologists would resist the move from merely considering welfare to granting it the same foundational importance, commensurate with dignity. Indeed, this approach seems to lean towards consequentialism, insofar as dignity is weighed against—and may even be outweighed by—considerations of the good. While the moderate deontologist may be able to save constraints on this approach, it seems more likely that the first-order view that is generated will be akin to simply weighing reasons. If this is the case, it will be especially difficult to justify the threshold as not simply a matter of whenever welfare considerations outweigh considerations of dignity. Moreover, even if an appropriate threshold is set, it is unclear the way in which the dignity of the rights-holder is respected when dignity is simply outweighed by welfare, i.e., Alexander's concern from above.

Of course, I did argue above that the rights-holder is respected insofar as tragic-remorse is apt. The welfare-friendly deontologist can go this route as well, but I think she will have a harder time justifying the moral residue. When there is one moral feature justifying constraints, e.g., dignity, it seems clear that any act that compromises that feature would leave some kind of moral residue. When there are two moral features that justify moderate constraints that simply weigh against each other, it seems that there either must be moral residue in all cases or in none. That is, if welfare and dignity are commensurate, then the response to infringements of either ought to be the same. Here, we are trying to justify the moral residue of a threshold-meeting case. So, on this view, it seems as if something at least akin to tragic-remorse must also be apt every time that considerations of dignity outweigh considerations of welfare as well. Imagine that the only way to save two dying persons is to brutally murder a third innocent person. Calling for something akin to tragic-remorse seems suspect here. Perhaps one might feel sadness at the lost lives, but it seems inappropriate for it to be an emotion that indicates any sort of responsibility for what happened. And, if we need not feel the weight of responsibility of our actions when welfare is outweighed by dignity, it is unclear the way in which they are playing commensurate roles in justifying the deontic status of actions.

All of this is to simply raise doubts concerning the welfare-friendly approach. There may indeed be a way to justify differing responses to compromising welfare as opposed to dignity. And, perhaps there is a way to set a threshold that is not simply defined by whenever welfare outweighs dignity, as well as ward-off arguments that such a view ultimately abandons deontological justifications for consequentialism. However, these concerns minimally suggest that we look elsewhere for a deontological foundation for thresholds.

In order to justify a more thoroughly deontological conception of constraints, albeit moderate ones, consider instead the approach that focuses on dignity alone. The basic strategy here is to recognize that while respect for the dignity of persons generates constraints, we must also recognize that the potential beneficiaries of my infringing a constraint have dignity, too. Respect for dignity, on this view, requires

including in our deliberations the dignity of all persons affected by our possible actions. That is, it might be argued that the dignity of each and every person living in New York City should play a meaningful, and at times decisive, role in our deliberations, even if saving them requires the sacrifice of a single person. To suggest otherwise, requires that we in some sense ignore the dignity of all but the rights holder in the case.

Taking this a bit slower, there are two explanatory challenges to be met for this view. First, there is the question of how such a view amounts to respecting, as opposed to promoting, dignity, in threshold-meeting cases. One can simply stipulate that respect requires in some way responding to the dignity of all, but acting for the benefit of the masses seems a lot more like promotion than respect as it has traditionally been understood. Second, if it can be shown that infringing a constraint does respect dignity, it must be explained why respect for dignity requires adhering to constraints in some cases, while infringing in others. Why is there a shift in what respect requires?

Take these challenges in turn. In what way does an agent respect dignity, rather than promote it, when a constraint is permissibly infringed? In order to make sense of this, we need to analyze the notion of respect. Often, the focus has been on the negative requirements of respect. Respect for persons means (at least, in part) that there are certain things one simply *cannot* do to another person. However, it is important to also highlight a positive requirement of respect, namely what I will call *acknowledgment*. Respect does require that I not do certain things to you, e.g. lie, steal, or kill. However, these requirements can be largely met by simply not interacting with you. Acknowledgment, on the other hand, requires something more positive. It requires that I recognize you as a person with dignity that deserves inclusion in my deliberation when my actions (or non-actions) will affect you.

Returning to the issue at hand, consider again Janik's case above. Janik is faced with killing one person to stop a bomb from detonating that will kill 10,001 persons. Moderate deontology recommends that Janik infringe the constraint against killing in this case, which will result in saving 10,000 lives. How is this action an instance of respecting, rather than promoting the dignity of persons? With the explanation of constraints given in §2 and the idea of acknowledgment just laid out, there are two ways in which Janik's action represents respect for persons. First, although Janik must kill someone, that person remains, in some sense, respected via the fitting moral emotions we will expect of Janik. Second, we can now see how respect for persons requires the inclusion of the 10,001 persons in Janik's deliberation. Respect does not require only that we refrain from certain actions. It also requires acknowledgment. Janik's action, whichever he takes, will have a major effect on each of those 10,001 lives. In order for Janik to show respect for the dignity of each of those lives, he must allow their fate to figure into his deliberations. Janik's action thus respects the dignity of the one through the expression of the gravity of his action and the dignity of the 10,001 by acknowledging the dignity of every individual his actions will affect.

But we still need to understand how respect in the form of a constraint is to be weighed (in some sense) against respect in the form of acknowledging the dignity of every individual. If constraints serve as defaults for the purposes of guiding action,

when are infringements justified? This is the second explanatory challenge. It is one thing to say that Janik must figure those 10,001 lives into his deliberation, but it is another to explain why respect entails that Janik must infringe a constraint in this case, but Leona cannot when only 5 lives figure into her deliberation. What could possibly explain this shift in what respect dictates except that at some point the benefited lives outweigh the harm that might be done to a single individual?

The absolutist of course argues that there is no shift in what respect dictates. In all cases, respect requires that the agent refrain from infringing a constraint. In light of my focus on acknowledgment, she will argue that an agent may indeed acknowledge the 10,001 lives. Just as I allow that tragic-remorse is fitting in threshold cases, so too may the absolutist. Janik must indeed acknowledge the lives of the 10,001. He must consider them in his deliberations, and when he ultimately allows their deaths by refraining from infringing a constraint, it is fitting for Janik to feel tragic-remorse in response to the lives lost. Insofar as absolutism can indeed acknowledge all agents, why think respect requires moderation at all?

Moderate deontology, I submit, arises from an insistence that true acknowledgment requires that there is at least some situation in which the person at issue would be a difference-maker in one's deliberations, i.e. it would change the result of one's deliberation about what one ought to do. The idea is that there is something insincere about claiming that the 10,001 persons are truly a part of Janik's deliberations. On the absolutist's view, once Janik recognizes that the possible action is a constraint infringement, nothing else really matters. The only possible factor that could cause Janik to change his action is if he is in a moral dilemma, forced to choose between two constraint infringements, and even then, Janik would not *permissibly* come to a different result in his moral deliberation. Thus, even if an absolutist claimed that Janik ought to include the 10,001 in his moral deliberation, insofar as there are no stakes in which the result of Janik's deliberation would change, there is no real sense in which anyone else is really playing a role in deliberation. Thus, the first step to defending this moderate proposal is to note that acknowledgment will require that there is *some point* at which the result of one's deliberation will shift.

From here, the next step is establishing why this shift in deliberation should occur at the point the moderate suggests. Why, for instance, doesn't the shift occur whenever the stakes for the beneficiaries are greater? That is, why doesn't respect require that Leona sacrifice the one to save her five dying patients? This is where the other side of respect comes in. It remains the case on my view that respect requires the negative duty of not treating persons in certain ways, e.g. lying, stealing, or killing. It is simply that we must also acknowledge a duty to aid. The doctrine of doing and allowing (DDA) may be helpful to see how these conflicting duties might figure into moral deliberation. There is an extensive literature on DDA, which I do not plan to rehash here. To provide one example of how DDA might be justified, however, consider Philippa Foot.<sup>19</sup> According to Foot, our negative rights, our rights to non-interference, are more important than our positive rights, our rights to goods or services.

<sup>19</sup> See Philippa Foot, "Killing and Letting Die", in *Moral Dilemmas: and Other Topics in Moral Philosophy*, New York: Oxford University Press, (2002).

A violation of negative rights occurs when one initiates a harmful sequence, whereas a violation of positive rights occurs when one simply allows for an already initiated harmful sequence to complete. These rights in turn suggest that our doings are more morally weighty than our allowings. For my purposes, however, whatever the underlying justification for placing more moral weight on agents performing an action than an agent merely allowing some event to occur, deontologists tend to agree that DDA holds. And, if DDA is true, it makes sense for the actions an agent performs to be at the forefront of one's moral deliberations. Thus, on this deontological view, morality requires that I *allow* a great deal to occur before I take seriously the possibility of *doing* moral harm. In this way, I contend, the moderate deontologist can also hold that the threshold for killing an innocent, *a doing*, is fixed at a point much greater than the good done by *not allowing* a few to live.

Although I suggested that deontologists tend to defend DDA, I admit that DDA has its dissenters, even among deontologists. Thus, it is worth rehearsing an alternative approach to justifying the dual responsibilities that I argue respect for persons requires. F. M. Kamm, in response to a separate issue facing deontology, defends what she calls the inviolability of persons.<sup>20</sup> A person is inviolable if and only if there are certain circumstances in which it is impermissible for others to harm her. A person is more or less inviolable to the extent that there are a greater or lesser number of circumstances in which it is impermissible for others to harm her. On Kamm's view, the more inviolable a person is, the greater dignity one has. For her purposes, this explains why it is that I cannot kill one to stop five other killings. A view that holds that I cannot kill in this case, shows greater inviolability for persons, and thus recognizes a greater degree of dignity.

In response to this argument, there remains the question of whether inviolability is all there is to human dignity. That is, it is not enough to show that considerations of inviolability lead to these results, we need to be sure that other considerations of dignity do not interfere. In response to Kamm, Kasper Lippert-Rasmussen introduces the idea of unignorability.<sup>21</sup> A person is said to be unignorable if and only if there are circumstances in which it is impermissible for others to *allow* her to be harmed. A person is more or less unignorable to the extent that there is a greater or lesser number of circumstances in which it is impermissible for others to allow her to be harmed.

How this functions as a response to Kamm's view does not concern me here. Rather, I introduce these ideas as an additional way of understanding my proposal above. Respect requires acknowledgment in addition to constraining actions because moral persons are both inviolable and unignorable. Thresholds may represent a way in which persons are less inviolable on a moderate view than an absolutist one. However, this does not by itself show that moderate deontology recognizes a lesser

<sup>20</sup> See F.M. Kamm, *Morality Mortality*, Vol. 2. New York: Oxford (1996).

<sup>21</sup> See Kasper Lippert-Rasmussen, "Moral Status and the Impermissibility of Minimizing Violations." *Philosophy and Public Affairs*, 25(4), 333-351 (1996); Kasper Lippert-Rasmussen, "In What Way Are Constraints Paradoxical?" *Utilitas*, 11, 49-70, (1999); and, Kasper Lippert-Rasmussen, "Kamm on Inviolability and Agent-Relative Restrictions." *Res Publica*, 15(2), 165-178 (2009).

degree of dignity. Rather, the moderate view recognizes a greater dignity for persons with respect to their unignorability. How exactly we are to weigh these competing features of our dignity still needs to be worked out. What is important for our purposes here is noticing that the idea of thresholds can be justified from a wholly deontological perspective.

It will be helpful at this point to summarize the view. Respect requires that agents not treat persons in certain ways. Thus, when faced with treating a person in such a way, an agent who respects persons initially rules out that action in moral deliberation. However, in order to respect the dignity of all persons, both their inviolability and their unignorability, the agent must acknowledge, and so include in her deliberation, any other person that might be affected by her action. It remains the case that doings ought to have a much more significant effect on our deliberations than mere allowings. Actively harming a person is a much greater disrespect than merely allowing a harm. However, on this stronger view of acknowledgment, in order to truly acknowledge those that will be affected, it must be the case there is some situation in which the stakes would alter the result of the agent's deliberation. Where this shift in deliberation happens is up for debate. However, we can at least see that such a shift is appropriate.

It should be conceded that the account just laid out does not straightforwardly allow that considerations of non-human animals or other things of value, such as plants or art, can contribute to a threshold's being met. After all, thresholds are set by acknowledging the *dignity* of others. Insofar as non-human animals and other objects of purported value do not have dignity, they cannot contribute. On this view, then, it might be that I am not permitted to so much as break the pinky of another person, even if it would prevent the loss of an entire species of tree. I find this issue to largely be an avenue for future work, but it is worth saying a few things here. First, it seems plausible to me that plants and other non-sentient things of value, cannot directly contribute to a threshold. Of course, plants and other non-sentient value-bearing objects may provide moral reasons in non-constraint-infringement cases. But, when a constraint must be infringed in order to promote the value of such an object, that value simply does not contribute directly to the threshold. That said, there would likely be a large effect on many persons if an entire species of tree were lost. And, to the extent that the losses of non-sentient value harm sentient beings, it is possible on my view that a threshold might still be met. Of course, there may be other ways to go here, and much more would need to be said to fully defend this view, which is why I believe it to be an avenue for future work. I simply mean for this to be a first pass at applying my view of thresholds to these other cases.

With respect to non-human animals, however, I think it is important to say more. Insofar as animals are sentient, it seems that their interests should be more directly included in our threshold calculations. Luckily, I think acknowledgment provides a promising avenue. Insofar as non-human animals are non-rational, the respect that we afford humans with respect to their rationality will not apply. That is, we are not constrained from interfering with the agency of non-human animals. However, deontologists likewise must address the problem of borderline cases, e.g., children, severely cognitively disabled persons, and those suffering from dementia. In response, I propose that we not only acknowledge a person's agency, but also their

sentience. My contention, then, is that a deontologist can hold that non-human animals are persons deserving of the same respect afforded to humans to the extent that they resemble humans. Much of the deontologist's moral view focuses on the aspect of respect concerned with not interfering with the autonomy or agency of a rational being. These aspects of morality will, therefore, not apply to non-human animals. However, the aspect of respect that is concerned with their *sentience* does apply. Thus, I contend that non-human animals *can* contribute to a threshold. It may be that they contribute differently, insofar as there is not any sense of interfering with agency, that is at issue. However, it is consistent with this view that the lives of a group of animals might meet the threshold for breaking someone's pinky. Much more will need to be said to fully work out and defend such a view. My aim here is simply to show that there may be resources for the moderate deontologist who takes on my view to extend considerations beyond human persons.

## 4 Conclusion

There are many challenging questions facing a proponent of moderate deontology. Absolute deontology and consequentialism seem to occupy the clearly consistent ends of the spectrum of views that consider the promotion of good and possible constraints on such promotion. Absolutists put the interests of a right holder above all else, while consequentialists put the goodness of consequences first. Moderate deontologists, on the other hand, seem to waver. The interests of the rights holder matter a great deal, but so do the interests of others that might be affected by a rights infringement. How are rights and constraints to be thought of, when exceptions are made? And, how could one ever justify some exceptions, but not all?

This paper worked to shed light on these oft-asked, but rarely answered, questions. Ultimately, I argued that the deontological motivation to respect the dignity of persons clearly justifies a moderate deontology in which the interests of all parties are considered in moral decision-making. Respect does require that an agent not treat others in certain ways, but it also requires that an agent acknowledge the persons who are affected by her action. It may be argued that this acknowledgment requires that those persons figure into the agent's moral deliberations in such a way that there are at least some cases in which those considerations would lead to a different result in deliberation. When this happens, we expect agents to continue to respect the dignity of the rights holder through certain moral emotions, i.e. tragic-remorse, over the circumstances and sadness at the necessity of her actions. This moral residue represents the way in which an agent remains in some sense constrained in her action.

There remains, of course, the question of where these thresholds are located. That is, when should an agent's deliberation shift from its focus on the individual she would directly harm to a focus on the individuals that might be benefitted from such a harm? It would be great if a foundational view could answer this question. However, it seems unlikely that a satisfying response will be forthcoming. Instead, I suggest we rest satisfied having justified the general idea of moderate deontology on the basis of deontological motivations. The views laid out above show that there is at



least some point at which it becomes appropriate for an agent to favor the beneficiaries of a constraint infringement in her deliberation. Indeed, those who agree with the stronger view of acknowledgment will argue that doing so better shows respect for the dignity of all persons. From here, we can now rely on reflective equilibrium to settle the question of where thresholds lie. There is now an explanation of why our intuitions cluster where they do. It is the point at which the acknowledgment of those that might benefit from my constraint infringement pushes forward to the forefront of my moral deliberation.

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