

## PRIMA FACIE DUTY: AN ANALYSIS

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In this paper I attempt to clarify (a) the concept of a prima facie duty, and (b) the claim that there is a prima facie duty to do or avoid doing *x*. The first task will concern distinguishing the concept of a prima facie duty from other related but different concepts.

The term "prima facie duty" admits of a wide range of application. For instance, the act-utilitarian might argue that there are prima facie duties in the following sense. Rather than employ the seemingly infinite and unworkably cumbersome utility calculus each time we deliberate, one might produce "summary rules" based on an inductive determination of the probable aggregate utility of a class of acts. One likely summary rule would prohibit lying, since lying usually produces negative utility. One would then have a prima facie duty to perform those acts that usually produce positive utility and to avoid those that normally produce negative utility. Still, these are merely "rules of thumb" on the act-utilitarian account, since when such a rule conflicts with the aggregate utility of a given act of lying, the summary rule yields to the overriding consideration of promoting maximum aggregate utility.<sup>1</sup> This, one could claim, is a sense in which there is a prima facie duty not to lie.<sup>2</sup>

The focus of this paper will not be accounts in which prima facie duties issue solely from utilitarian or any other type of consequentialist considerations. Rather, I am concerned with prima facie duties that are derived from deontological considerations.<sup>3</sup> Further tenets typical of this type of view are that right is prior to good and that the consequences of an act are not the sole determinants of its moral character. Such accounts also typically attempt to avoid difficulties associated with rigoristic deontological views, holding instead that there

is a plurality of duties and that more than one of these duties can apply to the same act, entailing possible conflict. Hence, prima facie duties immediately yield actual duties only when no other prima facie duty applies, and a prima facie duty to do *x* yields a duty to do *x* only when there are no overriding prima facie duties.<sup>4</sup> The multiplicity of duties, and the resultant possibility of their conflicting in individual cases, necessitates the *ceteris paribus moralibus* clause, which distinguishes prima facie from actual duties.

In the following sense, prima facie duties are conditional: a prima facie duty to keep a promise yields an actual duty to keep a promise only on the condition that there are no other overriding prima facie duties.<sup>5</sup> But there is another way in which duties can be conditional that in no way captures the distinction between prima facie and actual duties. A conditional duty (in this sense) is a duty (actual or prima facie) that holds only if a specific situation exists. Examples of such "conditional duties" are: "If he gives you a present, you should thank him for it," and "If she has a flat tire, you should offer to help fix it." Here there is no reference to other conflicting or overriding duties, but rather to some set of specific conditions that *actualizes* the duty, such as the fact that she has a flat tire. In a sense, conditional and prima facie duties (as minimally specified thus far) rest on hypotheses, but the hypotheses are of a different order. The hypothesis of a conditional duty is some specific state of affairs, generally of an empirical nature. The hypothesis of a prima facie duty involves an indefinite deontic supposition that no overriding prima facie duty applies.<sup>6</sup>

It is in the following sense that prima facie (as opposed to actual) duties are conditional: a conditional duty yields an actual duty only when there are no conflicting overriding conditional duties. A conditional duty, for example, to keep a promise yields an actual duty to keep a promise only when this duty is not overridden by another conflicting conditional duty.

Still, there is a crucial ambiguity in this formulation of conditional duties. The ambiguity lies in the failure to indicate the status of overridden conditional duties. There are two

possibilities: (i) Overridden conditional duties merely disappear, ceasing to have any moral import. On this view, duties are *defeasible* in that overridden duties are *eliminated* by duties possessing greater weight in that case. For example, an overriding conditional duty to save a life *eliminates* the duty to keep a promise. (ii) Overridden conditional duties still retain some moral import, force, or significance even when they are overridden. On this view, having to transgress one's duty to keep a promise in order to comply with the overriding duty to save a life makes one's act (but not necessarily one's character) somehow flawed or less perfect than it would have been had one not broken the promise. This is not to say that one should have acted any differently in those circumstances, but it might justifiably engender some moral regret concerning the broken promise, since overridden duties leave some "moral residue." I shall refer to duties of this sort as *non-defeasible*, where non-defeasible does not imply "non-overridable."

## II

In order to clarify the distinction between defeasible and non-defeasible duties, I now turn to a set of distinctions that are useful in epistemology. These distinctions concern the notion of evidence, and I am invoking them at an intuitive level.

In epistemic contexts, one says such things as "In the absence of contrary evidence, Gregg's saying that he will attend the meeting tonight is some reason for thinking that he will attend the meeting." At lunch Gregg tells me he will attend the meeting. Now consider three cases: (a) I know nothing about Gregg's likes and dislikes for meetings and music. In this case, there is no contrary evidence available to me for Gregg's attending the meeting. (b) I know that Gregg is an avid Chuck Berry fan; and, today it was announced that, in preparation for an upcoming tour, Chuck would be playing a previously unannounced concert this evening. Gregg is likely to know this, since I heard about the concert on Gregg's favorite radio station. Moreover, I know of no case when Gregg did forego a chance to

see Chuck Berry in order to attend a meeting. In this case there is a considerable amount of contrary evidence available for Gregg's attending the meeting. (c) When I myself go to the meeting, I find out that Gregg did not make it to the meeting that he claimed he would attend. Here I have decisive evidence against Gregg's attending the meeting.

In case (a), in which the antecedent clause "in the absence of contrary evidence" is satisfied as far as I am concerned, "Gregg said he will attend the meeting" has clear epistemic import for Gregg's attending the meeting. In case (b), though the epistemic import is greatly diminished and though it may be more reasonable to believe that Gregg will not attend the meeting, still "Gregg said he will attend the meeting" has some epistemic import or bearing on Gregg's attending the meeting. In case (c), however, "Gregg said he will attend the meeting" has no epistemic import or bearing on Gregg's attending the meeting. It doesn't constitute even the slightest reason for my believing that Gregg is at the meeting since I see all ten people who came to the meeting and Gregg isn't one of them.<sup>7</sup>

What needs to be distinguished are cases (b) and (c). Yet, the conditional, "In the absence of contrary evidence, Gregg's saying he will attend the meeting is a reason for me to believe that he will be (or is) there," is true. And the subjunctive is also true: if I did not have any contrary evidence, then I would have reason to believe that Gregg is (or would be) there. Thus, neither saying that the conditional is true even if the antecedent is not satisfied, nor saying what would be the case if the antecedent is not satisfied, nor saying what would be the case on the subjunctive assumption that I did not have contrary evidence, helps to discriminate between case (b), where Gregg's statement has some epistemic import, and case (c), where Gregg's statement has no epistemic import.

It should be clear that the moral import of overridden non-defeasible duties should function as does the epistemic import in case (b) above, whereas the epistemic import in case (c) most closely mirrors the moral import of overridden defeasible duties. In cases in which a duty is overridden, the

moral import of non-defeasible duties remains, as does the epistemic import in case (b). On the other hand, defeasible duties lose their moral import when overridden—in the manner in which epistemic import is absent in case (c). However, if neither the counterfactual nor subjunctive account will distinguish (b) and (c) in the epistemic case, each will also fail to distinguish defeasible and non-defeasible duties.

The above argument illustrates the deficiency inherent in the "conditional account" of prima facie duties. What is needed is an account that preserves and explains the moral import of prima facie duties when the antecedent concerning the absence of overriding prima facie duties is not satisfied. Why does the non-defeasible duty function as does the epistemic import of Gregg's statement in case (b) rather than as in case (c) in the presence of overriding factors? While the difference in the epistemic case might be understood in terms of the decisiveness of contrary factors, it cannot be that the contrary non-defeasible duties fail to be decisive in determining the actual duty, since both defeasible and non-defeasible duty accounts must allow contrary factors to be decisive.

### III

Given the ambiguity of the "conditional account" of prima facie duties, we should determine which view should be attributed to Ross. Some commentators have held that overridden duties are *eliminated* on Ross' view. Bas van Frassen sees Ross as holding that the prima facie duty to save a life overrides the prima facie duty to keep a promise: the former eliminates the latter. Hence, van Frassen argues that, on Ross' view, "conflicts among prima facie duties are, after all, illusory upon proper understanding."<sup>8</sup> Frank Snare entertains the possibility that "certain prima facie duties, when overridden, left no residual obligations,"<sup>9</sup> yet claims to be "remaining true to Ross."<sup>10</sup> In arguing that *ceteris paribus* clauses can be eliminated, David Kurtzman introduces the notion of a "rule of ranking" whose function is to determine

"which of two predicates applies . . . by indicating which conjunction ranks over the other" where the conjunctions are of properties that are "mutually exclusive."<sup>11</sup> He further claims that Ross' theory admits of a "rule of partial ranking" that entails that overriding prima facie duties exclude, in the sense of eliminating, overridden duties.

Common to van Frassen, Snare, and Kurtzman is the attribution to Ross of the view that prima facie duties are defeasible. Consequently, when the duty to keep a promise is overridden by the duty to save a life, the duty of promise keeping retains no moral force, significance, or import.

This account of Ross is mistaken, since Ross clearly intends prima facie duties to retain some moral import when they are overridden. On this point he states, "When we think ourselves justified in breaking . . . 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 . . . ; we recognize, further, that it is our duty to make up somehow to the promisee for the breaking of the promise."<sup>12</sup> Perhaps the use of the term "prima facie" is responsible for this type of misinterpretation, but Ross addresses the point directly, saying: "Prima facie suggests that one is speaking only of an appearance which a normal situation presents at first sight, and which may turn out to be illusory; whereas what I am speaking of is an objective fact in the nature of the situation, or more strictly in an element of its nature." Further, he says: "there is nothing arbitrary about these prima facie duties. Each rests on a definite circumstance which cannot seriously be held to be without moral significance."<sup>13</sup> If prima facie duties were defeasible, we would not expect Ross to claim that "Whether an act is a proper or actual duty depends on *all* the morally significant kinds it is an instance of."<sup>14</sup>

Ross clearly intends prima facie duties to be *non-defeasible*. Likewise, for Ross, there are cases of real as opposed to merely apparent moral conflict, since overridden prima facie duties retain some moral import and since in a real sense they conflict with other prima facie duties. Since his view is the paradigm of prima facie duty accounts, I hereafter

use the term "prima facie duty" to refer to duties that are non-defeasible, and I continue to refer to defeasible conditional duties simply as "defeasible duties."

We saw earlier that the traditional account of prima facie duties is in terms of a conditional. But the "conditional account" faces a serious difficulty if it cannot distinguish prima facie and defeasible duties. The task for the prima facie duty theorist is to provide an account of how a prima facie duty retains some moral import when other things are *not* equal, that is, when the antecedent in the conditional account is not satisfied. Although one might say that the conditional is still true and that one would have had the duty if other factors were not present, this would not distinguish prima facie from defeasible duties. Ross' formulation falls prey to just this difficulty and thus is not illuminating.<sup>15</sup>

#### IV

Something beyond the "conditional account" must be said about prima facie duties in order to preserve the contrast with defeasible duties. While a thoroughgoing account would be an enormous project beyond the scope of this paper, I shall present an admittedly brief sketch of what appears to be a promising approach.<sup>16</sup>

My strategy is to appeal to views on act individuation to gain a better understanding of the moral issues with which we have been concerned. Somewhat briefly and crudely, and with numerous caveats, the distinction between act unifiers (such as Davidson) and act multipliers (such as Goldman) comes to this. Consider the following episode of behavior: I turn the ignition key in my car. According to the unifiers, I have performed one action of which many descriptions can be given. A partial list might be: "I turned my wrist"; "I closed the electrical circuit"; "I turned on the ignition"; "I cranked the starter"; "I started the engine"; and, if it's not my day, perhaps "I broke the flywheel." Multipliers such as Goldman will maintain that, except for a few provisos, each nonsynonymous act description

individuates an ontologically distinct act-token. The unity of action, seemingly obliterated by this proliferation of act-tokens, is addressed by Goldman's concept of level-generation. A group of act-tokens, properly related, is called an act-tree, which roughly corresponds to what unifiers call a single action. In the above example, each of the unifier's act descriptions would designate an ontologically distinct act-token in an act-tree.<sup>17</sup>

Given this rough sketch of the respective positions on act individuation, I suggest that deontological theorists who maintain that there are prima facie rather than defeasible duties would do well to adopt the multiplier view on act individuation in which act descriptions such as "breaking a promise" and "saving a life" denote ontologically distinct act-tokens. Act-tokens, as opposed to the act descriptions of the unifier view, are precisely the type of entity that can explain why the duty to keep one's promise doesn't vanish when it is overridden. The duty doesn't vanish since the act-token "I broke a promise," whose performance transgresses the duty of promise-keeping, is an ontologically distinct entity that is not dependent upon its being a member of this particular act-tree, another of whose members happens to be the act-token "I saved a life," which in this case overrides the duty of promise-keeping in virtue of its compliance with the duty of benevolence. In this way, the "moral traces" left by overridden prima facie duties are grounded in ontologically distinct entities. Although such a program would need to be worked out rigorously, one could predicate prima facie rightness or wrongness of act-tokens and formulate the prima facie duty in this manner: "*Ceteris paribus moralibus*, one ought to perform an act-tree which contains a prima facie right act-token." One's actual duty is to perform that act-tree whose prima facie right act-tokens most outweigh its prima facie wrong act-tokens.

This option would not be so facile if one adopts the unifier view. Prima facie rightness and wrongness must be predicated of something, namely, the action, on the unifier view. If breaking a promise in order to save a life involves one act, we

would have to say of one and the same act that it is both prima facie right and prima facie wrong, and accomplish this while avoiding conflation with defeasible duties. The most plausible formulation is that the act is right in some respects and wrong in others. Perhaps we might say: with respect to promising, the act is wrong; but, with respect to benevolence, it is right. But one is inevitably drawn toward breaking the act into parts—some prima facie right and others prima facie wrong. Neither properties nor act descriptions appear to be the proper subjects for this type of predication: how could a property or description be prima facie right? But, if the act is broken into simpler constituent entities, the view looks more like that of the multiplier.

A thoroughgoing account along these lines both would provide a method for distinguishing prima facie from defeasible duties and would represent a significant advance over the "conditional account."<sup>18</sup>

## NOTES

<sup>1</sup>Alternatively, the rule against lying provides a presumptive case against lying, based on lying's probable consequences, which can be defeated by a given lie's producing positive aggregate utility.

<sup>2</sup>On this account, prima facie duties are actually weak *ceteris paribus* rules, essentially epistemic in nature. They are weak in that their import extends only to what might be referred to as "normal conditions." Any deviation from the normal state of affairs immediately defeats the rule and its applicability ceases. It is in this sense that these rules are prima facie. This type of point appears in numerous passages in Mill's *Utilitarianism* and David Lyons' *Forms and Limits of Utilitarianism* (New York: Oxford UP, 1965). I am indebted to Ted Klein for alerting me to the subtleties of this point.

<sup>3</sup>I shall take the view developed by William David Ross in

*The Right and the Good* (New York: Oxford UP, 1930) as the paradigm of this type of view. Ross' anticonsequentialism is best illustrated in his argument against Utilitarianism:

That which is right is right not because it is an act, one thing, which will produce another thing, the general welfare, but because it is itself the producing of an increase in the general welfare. . . . Just as before we were led to recognize the prima facie rightness of the fulfillment of promises, we are now led to recognize the prima facie rightness of promoting the general welfare. In both cases we have to recognize the *intrinsic* rightness of a certain type of act, not depending on its consequences but on its own nature. (47)

<sup>4</sup>There is no obvious reason why only another prima facie duty can override a prima facie duty, but to my knowledge most accounts include this stipulation.

<sup>5</sup>Ross himself suggests the term "conditional duty" as an alternative to "prima facie duty" (19).

<sup>6</sup>Steven Sverdlik brought this point to my attention. Still, one might ask: "What, if anything, is captured by the distinction between duties that are conditional in this sense and those that are not?" I suspect, but will not argue the point, that it is a way of distinguishing positive and negative duties. A positive duty generally requires the existence of some material condition to actualize the duty (in the sense of requiring the performance of a specific act), as in the cases of gratitude and beneficence, whereas negative duties do not, as in the case of nonmaleficence. It should also be noted that conditional duties in this sense do not conform to the logic of the material conditional.

<sup>7</sup>Perhaps even in case (c) Gregg's statement does provide a *slight* reason—I might be hallucinating Gregg's absence. But once I reexamine the room, determine who is at the meeting,

and perhaps mention Gregg's absence to those in attendance, if my belief is confirmed without dissent, the only remaining ground for believing that Gregg might be there is some type of radical skepticism, which would in turn undermine the claim that Gregg's statement counts as evidence at all. Thus the point could be restated as: "Assuming that Gregg's statement counts as evidence, . . ."

<sup>8</sup>Bas van Frassen, "Values and the Heart's Command," *Journal of Philosophy* 70, no. 1 (11 January 1973): 5-19, quote on 8.

<sup>9</sup>Frank Snare, "The Definition of Prima Facie Duties," *The Philosophical Quarterly* 24 (Spring 1974): 235-44, quote on 242.

<sup>10</sup>Snare 235.

<sup>11</sup>David Kurtzman, "Ceteris Paribus Clauses: Their Illumination and Elimination," *American Philosophical Quarterly* 10 (January 1973): 35-42, quote on 39.

<sup>12</sup>Ross 28. Ross' claim is not merely one of descriptive psychology, but rather an attempt (a) to illustrate his theory, and (b) to lend plausibility to his view by appealing to our considered moral judgments.

<sup>13</sup>Ross 19-20.

<sup>14</sup>Ross 19.

<sup>15</sup>Ross' account is: "Prima facie duty is the characteristic . . . which an act has . . . 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" (19).

<sup>16</sup>A more detailed argument for this position is found in Richard Francis Galvin, "Act Individuation and Deontological

Theories," presented at the American Philosophical Association: Eastern Division, Boston, December 1983.

<sup>17</sup>Davidson's view is best represented in "Actions, Reasons and Causes" and "Agency," both of which are in his *Essays on Actions and Events* (New York: Oxford UP, 1980). Goldman's view appears in *A Theory of Human Action* (Princeton: Princeton UP, 1970), and is refined in "The Individuation of Action," *Journal of Philosophy* 68, no. 21 (4 November 1971): 761-74. For the sake of verbal economy, I have taken liberty with some of the formulations. For instance, Goldman would have every act-token feature a specification of the agent, act description, and temporal locus of the deed. So, for Goldman, "I started the ignition" should actually read "Galvin started the ignition on 26 January 1986."

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