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PERSPECTIVISM AND RIGHTS

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PERSPECTIVISM is the view that what an agent ought to do always needs to be determined relative to this agent's epistemic position. When we have absolutely no way of knowing that a seemingly innocuous action stands to cause some serious harm through an unforeseeable causal fluke, it cannot be that it would be wrong for us to perform this action (though it may be highly regrettable if we do, and others may permissibly stop us in reasonable ways).[1]

Although this view has some important theoretical virtues, it also suffers from what appears to be a crucial flaw: it seems incompatible with the existence of universal claim rights. More specifically, perspectivism turns out to be unable to capture the universality of rights, at least as long as we accept two plausible and widely recognized conceptual claims: *Correlativity* between rights and their corresponding directed obligations; and *Obligation-Reason*, the claim that if *S* has an obligatnion not to ϕ, then *S* has a reason not to ϕ. When combined with plausible statements of universal rights, Correlativity and Obligation-Reason yield claims that necessarily conflict with the basic tenets of perspectivism. Perspectivists thus find themselves in a situation where they must reject either Correlativity, Obligation-Reason, or the existence of universal rights. My first aim in this article is to carefully draw out this *rights trilemma for perspectivism*, showing how it necessarily arises due to structural features of the view.

My second aim is to discuss the options available to perspectivists in reaction to this problem. While the problem of universal rights for perspectivism has been broached elsewhere (albeit often only superficially), in-depth discussions of how perspectivists might be able to deal with it are few and far between until now. The most prominent is due to Michael Zimmerman, who suggests that perspectivists should give up the idea of universal claim rights in its most familiar form.[2] Zimmerman instead proposes that we should focus on a different kind of rights that we may call *perspectival rights*. Whether these rights obtain depends fundamentally on the epistemic position of the obligated

1 Following Michael Zimmerman, perspectivism is also sometimes called *prospectivism* (*Living with Uncertainty* and *Ignorance and Moral Obligation*).

2 See Zimmerman, *Living with Uncertainty*, ch. 2, and *Ignorance and Moral Obligation*, ch. 5. See also Littlejohn, "Is Justification Just in the Head?"

party, which brings rights in line with perspectivist judgments about reasons and oughts. As I shall argue, such a move comes with some very substantial costs, both extensional and theoretical in nature. Careful consideration of cases reveals that judgments about rights simply have a significantly more robust "objective flavor" than judgments about reasons and oughts. Rights thus resist a simple subsumption into the perspectivist framework, giving perspectivists reason to search for alternative solutions to the rights trilemma.

In what follows, I propose such a different approach, unexplored until now. I argue that in response to the rights trilemma, perspectivists should reject Obligation-Reason. This would require us to understand obligation as a *prima facie* normative notion. On this view, rights and obligations generally give rise to reasons but can fail to do so altogether when certain (epistemic) conditions are not met. While rejection of Obligation-Reason may appear to be a radical step, I lay out some considerations that hopefully soften its bite. As I argue, even a *prima facie* view manages to retain two crucial conceptual features of rights—namely, the right holder's entitlement to demand compliance and the existence of important normative consequences in cases of rights infringement (e.g., duties of explanation or compensation). Though the move toward a *prima facie* view of rights and obligations is not without costs, I argue that overall, it represents the best answer to the problem of universal rights for perspectivists, at least when considering the even more costly alternatives.

The article proceeds as follows. In section 1, I offer a slightly more precise definition of perspectivism, employing the notion of *epistemic filters* while also briefly sketching some of the main attractions of the view. In section 2, I lay out the rights trilemma for perspectivism. In section 3, I discuss and criticize Zimmerman's perspectival view of rights, which gives up the idea of truly universal rights. I then develop my alternative response to the rights trilemma in two steps. In section 4, I lay out the *pro tanto* view of rights and show that while it represents an important step toward a solution of the rights trilemma, it cannot itself provide the needed fix. In sections 5 and 6, I then develop and defend the *prima facie* view of rights as a novel way out of the trilemma. I end with a brief outlook in the concluding section.

1. PERSPECTIVISM AND EPISTEMIC FILTERS

1.1. Reasons and Oughts

Any discussion of perspectivism, especially one that focuses on rights and obligations, is well advised to aim for maximal clarity in the conceptual repertoire it draws on. Not only do the terms 'ought', 'reason', and 'obligation' mean different

things to different people, but certain definitional combinations make core perspectivist claims either tautological or downright contradictory. In this first section, I therefore want to lay out a specific understanding of the core perspectivist idea that is put forward in terms of normative reasons and the all-things-considered ought claims that they support. It builds on the widely accepted view of normative reasons as considerations that count in favor of an action or attitude and the idea that these reasons jointly determine what an agent ought to do.[3]

When laying out a perspectivist position in terms of reasons in the way I am going to propose, the notion of reasons itself should be held not to presuppose any controversial features that settle the controversy by conceptual fiat. This means that normative reasons should not be understood as conceptually entailing any kind of mind dependence or subjectivizing element. Holding this conceptually nonsubjective notion of normative reasons fixed, we can then understand perspectivism as making a substantive claim about how the reasons for actions that determine what we ought to do necessarily depend on our perspective.

1.2. Epistemic Filters

On the construal I will rely on in the following, perspectivism claims that there are *epistemic filters* on the normative reasons that determine what we (morally and otherwise) ought to do.[4] To get a grip on what this claim amounts to, it is helpful to consider a classic case of action under ignorance as an illustration of the differences between perspectivism and the contrary view, objectivism.

> *Sugar*: Host has Guest over for tea. Guest politely requests that Host put a tablespoon of sugar in her cup. Unbeknownst to both, the sugar in Host's sugar pot has been laced with an undetectable poison. If Host were to spoon in the sugar into the cup, Guest would die. What should Host do?

3 See paradigmatically Scanlon, *What We Owe to Each Other*, ch. 1. I will leave open the question of how exactly reasons determine requirements. For a thoroughgoing recent proposal, see Schmidt, "The Balancing View of Ought."

4 The term is due to Dancy (*Practical Reality*, 66). For a carefully elaborated version of the filter view, see Kiesewetter, "What Kind of Perspectivism?" I should note here that the question of how to best frame perspectivism is itself contentious. My aim in laying out the filter view is not to take a stance in this intraperspectivist debate. Instead, I simply seek to provide a formalization of the view that is sufficiently clear and suited to bringing out the rights problem in the most efficient manner. That being said, the problems discussed in the following should be straightforwardly translatable to alternative ways of capturing perspectivism, e.g., through the idea of prospective value. See Zimmerman, *Ignorance and Moral Obligation*, ch. 2.

According to objectivism, the question of what Host ought to do must be settled on the basis of all the relevant facts, whether or not they are or could be known by the agent. Given that the objective situation is what matters, an objectivist can confidently conclude that Host ought not to spoon the sugar into Guest's cup. That being said, an objectivist may of course also claim that this does not yet entail anything about Host's *blameworthiness* for doing so. Although acting wrongly, Host may nonetheless be fully excused for her action in light of her blameless ignorance of the pertinent facts.[5]

Perspectivists, on the other hand, disagree with this verdict. For perspectivists, what we ought to do cannot simply be determined on the basis of all facts but instead only on a subset of these—namely, those facts that are epistemically accessible to an agent.[6] Facts that are not epistemically accessible to *S*, or, differently put, facts that *lie outside of S's perspective*, cannot determine what *S* ought to do.[7] Thus, Host ought to give the sugar, since the reasons in favor of doing so (complying with Guest's request, most importantly) outweigh any reasons against that Host is and could be aware of (e.g., that excessive sugar intake is unhealthy). Assuming that what *S* ought to do is exclusively a function of what reasons *S* has, we can capture the core idea behind perspectivism as follows:

> *Perspectivism: X* is a reason for *S* to ϕ only if *X* is epistemically accessible to *S*.

Note that on the filter view, merely apparent *X*s are not suited for playing the role as reasons. Thus, perspectivists of this stripe are not committed to the view that one of Host's normative reasons for acceding to Guest's request is that

5 Traditionally, the sense of ought at issue here has often been identified with the ought of moral obligation. Recently, however, the debate has more commonly been led in terms of a more general kind of ought, the all-things-considered deliberative ought, which conclusively settles the question "What should I do?" I will focus on the latter in what follows. In doing so, I will use the term 'wrong' as meaning *such that* S *ought not to perform* and 'permissible' as meaning *such that it is not that case that* S *ought not to perform*, with 'ought' referring to the mentioned all-things-considered deliberative sense. Though this has the unfortunate effect of suggesting an exclusively moral reading, the stylistic advantages seem to me to outweigh any disadvantages.

6 In this context, perspectivists speak of "available reasons" (Kiesewetter, *The Normativity of Rationality*, ch. 8) or "possessed reasons" (Lord, *The Importance of Being Rational*, 8–9). Since my aim is not to provide a defense of a fleshed-out version of perspectivism, I will leave open the contested question of what it takes for a piece of evidence to be accessible to an epistemic subject.

7 The notion of perspective in play here is quite minimal. An agent's perspective is determined solely based on the evidence epistemically accessible to her. This usage of the term thus differs from the richer and more ambitious concepts discussed in Camp, "Perspectives and Frames in Pursuit of Ultimate Understanding"; and Sliwa, "Making Sense of Things."

the stuff in the sugar jar is pure sugar. After all, even though Host blamelessly believes this to be the case, there is no pure sugar in the jar. Instead, perspectivists following the filter view would identify factual *X*s that are epistemically accessible to Host that can play the role of reasons in this case.[8]

An alternative to this filter view of perspectivism would be a more radical belief-relative perspectivism or subjectivism, which would allow for the normative relevance of merely apparent *X*s. On this view, we would determine an agent's reasons by considering their actual beliefs and then asking ourselves what reasons they would have if their beliefs were true.[9] In what follows, I assume the less extreme (and it appears to me, substantially more plausible) evidence-relative version of perspectivism.[10]

1.3. Some Virtues of Perspectivism

While I will be primarily concerned with a problem for perspectivism in what follows, I would be remiss not to at least briefly mention some of its most important virtues. Otherwise, the project of exploring ways out of the rights impasse for perspectivists might seem moot to begin with—one might simply recommend adoption of objectivism instead. For this reason, I now sketch what I believe to be the most important advantages of perspectivism over objectivism, although the available space permits me only the briefest of glosses of each of them.

First, perspectivism has important extensional advantages over objectivism. Perspectivism can, and objectivism apparently cannot, properly account for the fact that sometimes we ought not to pursue certain courses of action because doing so would be risky or reckless in virtue of our suboptimal epistemic position. Some classic examples for such cases of choices under known uncertainty are Jackson's case of the doctor Jill and Parfit's case of the miners.[11]

A second important advantage of perspectivism over objectivism that is regularly cited is its *action guidingness*. One crucial feature of all-things-considered ought judgments, it may plausibly be claimed, is that they can serve as guides

8 These could be, e.g., summary facts about epistemic probabilities (for all that *S* knew, *p* was true) or individual facts about single bits of evidence, such as the facts that there has always been pure sugar in the sugar jar before, that it was labeled "sugar," and there was no sign of tampering.

9 Such subjective versions of perspectivism are defended by Jackson, "Decision-Theoretic Consequentialism and the Nearest and Dearest Objection"; and Parfit, *On What Matters*, vol. 1, ch. 7.

10 Again, however, the points and arguments will find wider application *mutatis mutandis*.

11 See Jackson, "Decision-Theoretic Consequentialism and the Nearest and Dearest Objection," 462–63; and Parfit, *On What Matters*, 1:159.

to action. Objectivism, which allows for the truth of ought judgments that lie beyond the epistemic ken of the agents subject to them, appears ill equipped to make room for this role of practical judgment.[12]

Third, and finally, Errol Lord argues that only perspectivism can account for the fact that when we ought to do something, it must be at least possible for us to do this thing for the right reasons.[13] Following a similar line of thought, Vuko Andrić argues that while both objectivists and perspectivists can account for the commonly accepted principle of Ought Implies Can, the rationales undergirding this principle, which have to do with the necessity of agents being able to properly react to the right-making features of acts, tell strongly in favor of perspectivism.[14]

2. THE RIGHTS TRILEMMA FOR PERSPECTIVISM

2.1. Universal Rights

Having sketched out the structure and core advantages of the view, let me thus turn to the rights trilemma for perspectivism. To get a grip on the problem, it is necessary to first say a few words on the notion of rights that is at issue. The rights that I am concerned with are claim rights in the classic Hohfeldian sense.[15] What is more, my interest is not with posited rights that are assigned by some political or social body but with the more fundamental and robust moral claim rights.

Some of these rights, although robust in one sense, may nonetheless be substantially conditional. I may have a right against your divulging my saucy secret only if you have promised not to do so or if our past interaction was such that a solid friendship has formed between us. Some moral claim rights may also find application only in specific circumstances (certain kinds of competition, perhaps) or accrue to people with certain roles, such as parents or teachers.

At least some rights, however, appear to be of a more universal nature—these are rights that are held by everyone and that are owed to them by all moral subjects. Plausibly (though not necessarily), these rights may be grounded in certain universal features of the rights holders. We might say, for example, that

12 See, e.g., Way and Whiting, "Perspectivism and the Argument from Guidance"; and Fox, "Revisiting the Argument from Action Guidance."

13 See Lord, "Acting for the Right Reasons, Abilities, and Obligation" and *The Importance of Being Rational*.

14 See Andrić, "Objective Consequentialism and the Rationales of 'Ought' Implies 'Can'" and *From Value to Rightness*.

15 See Hohfeld, *Fundamental Legal Conceptions*.

the most fundamental of these rights accrue to all of us in virtue of our humanity or, perhaps more liberally, our nature as sentient creatures with interests that can be respected or set back. Examples of such rights include rights to freedom of thought and expression, freedom of movement, and freedom from interference with one's privacy and bodily autonomy. Many of these rights have been codified as *human rights*. While the content of our universal rights in the moral sphere may ultimately differ from those enshrined in political declarations such as the UN's Universal Declaration of Human Rights, it is important to note that universality and unconditionality are crucial and irreplaceable elements in both political and philosophical notions of these fundamental rights.[16]

Ultimately, the rights problem for perspectivism that I sketch below arises with respect to every robust form of moral claim right. The arguments that I offer could therefore equally be constructed with examples drawing on more obviously conditional rights, say, rights to the performance of a specific promised act.[17] Since, however, the problem seems especially pressing regarding universal rights, I focus exclusively on these in the following. More concretely, I operate with one specific pet example of a putatively universal right.[18] This example has a relatively well-defined content, which will hopefully not only lend it greater plausibility but also make the construction of clear examples in which to test our intuitions about it easier.

> *Privacy*: If *R* has not consented to *S* reading *R*'s diary, then *R* has a right against *S* that *S* not read *R*'s diary.

I ask any readers who do not take the right in Privacy to be a plausible candidate for a universal right to bear with me for the time being. As will become apparent

16 For discussion of the relation between human rights and moral claim rights, see, e.g., Griffin, "Discrepancies Between the Best Philosophical Account of Human Rights and the International Law of Human Rights"; and Hinsch and Stepanians, "Human Rights as Moral Claim Rights."

17 In fact, given that promises and other normative powers like legitimate orders and consent are commonly defined with respect to their effects on rights and obligations, the arguments below also yield pressure for perspectivists to (at least partly) reconceptualize them to bring them in line with their theory. I leave a more in-depth discussion of this important point as a task for another day.

18 Readers might be surprised to find that the grammatical structure of the right in question is also conditional but should not let this distract them from the intuitive difference between conditional and universal rights just laid out. The consent clause included in Privacy is itself universal to all rights (or almost all, depending on the limits of consent) and thus does not detract from the universality of the right in Privacy. Rights that I have just called substantially conditional, such as the right to having a promise kept, of course would also include such a further condition and thus would be at least doubly conditional in nature.

shortly, the rights trilemma arises as a result of structural features of universal rights and is thus generally independent of their specific content.[19]

2.2. Two Commonly Accepted Features of Rights and Obligations

The rights trilemma arises when we consider rights like that in Privacy in conjunction with two very plausible conceptual claims. The first of these is:

> *Correlativity*: *R* has a right against *S* that *S* not ϕ if and only if *S* has an obligation not to ϕ owed to *R*.

Correlativity follows straightforwardly from the Hohfeldian conception that is at heart of the modern understanding of claim rights. The nature of the rights at issue is that they provide their bearers with what we may call a form of normative protection. Rights constitute a sort of *normative shield* against others—they rule out certain ways others could act against rights holders as incompatible with respecting the rights.[20] However, rights can be said to do so only if they correspond to normative restrictions on the side of these others.

It thus must be the case that anyone acting contrary to a right finds themselves subject to an obligation not to do so. What is more, this obligation must be directed. After all, the obligated party owes it to the right holder specifically not to perform the act against which the right protects. If I impermissibly read your diary, I not only act wrongly, but I wrong you. Though Correlativity may in principle be challenged, this would require a thorough and extremely revisionary reconceptualization of rights. For this reason, I do not pursue arguments against it in what follows.[21]

The second conceptual claim regards the obligations that correspond to rights. I have said that these constrain the permissible options available to those that are subject to these obligations. In what way do they constrain them? One simple and straightforward way one might take this to happen is the following.

> *Obligation-Ought*: If *S* has an obligation not to ϕ, then *S* ought not to ϕ.

19 Readers who have doubts about the content about Privacy on the grounds that its current form makes it vulnerable to counterexamples involving countervailing considerations like emergencies are referred to the discussion in section 4 below. There, I will turn to the question of whether Privacy needs to be specified further to be extensionally adequate.

20 For the shield metaphor, see, e.g., Regan, *Animal Rights, Human Wrongs*, 26; and Schauer, "A Comment on the Structure of Rights," 229–31.

21 For a defense of Correlativity in a similar dialectical context, see Zimmerman, *Ignorance and Moral Obligation*, 119–23.

Obligation-Ought is a claim that has been explicitly defended by several prominent moral philosophers.[22] Nonetheless, it is the more controversial of the two claims provided here. As I later show, the rights trilemma can also be constructed with a weaker claim regarding the normative force of obligations. This is the claim that I call Obligation-Reason.

> *Obligation-Reason*: If *R* has an obligation not to ϕ, then *R* has a (normative) reason not to ϕ.

However, I shall first proceed on the stronger claim of Obligation-Ought. I do this for the simple strategic reason that it allows me to reconstruct the rights trilemma in the clearest and most transparent way possible. We return to the possibility of rejecting Obligation-Ought and employing Obligation-Reason as an alternative in section 4 below.

2.3. The Rights Trilemma for Perspectivism

Perspectivism cannot allow for the joint truth of Privacy, Correlativity, and Obligation-Ought. Perspectivists thus are forced to jettison one of these three intuitively highly plausible claims. This is the rights trilemma for perspectivism. To see how the inconsistency arises, consider first that the three propositions just outlined together logically entail the following:

> *Ought Implication*: If *R* has not consented to *S* reading *R*'s diary, then *S* ought not to read *R*'s diary.

That the Ought Implication conflicts with perspectivism is quickly shown. Take the following restriction, which follows straightforwardly from the basic account of perspectivism laid out above.

> *Perspectivist Restriction:* If *S* ought not to ϕ on account of *p*, then *p* must be epistemically accessible to *S*.

We now need only to take on board the possibility of cases of ignorance regarding the application conditions of a given universal right. For Privacy, this would be:

> *Ignorance*: It is possible that *R* has not consented to *S* reading *R*'s diary, yet *S* has no epistemic access to this fact.

22 For some prominent defenses, see, e.g., Shafer-Landau, "Specifying Absolute Rights"; and Wallace, *The Moral Nexus*. At least if we assume the truth of a kind of moral rationalism and of Correlativity, this view is also implied by some of the most prominent theories of rights, e.g., the view of rights as side constraints. See, e.g., Nozick, *Anarchy, State, and Utopia*; and Dworkin's view of rights as trumps in *Taking Rights Seriously*.

The truth of Ignorance is quickly established by means of example.

> *Twin Impersonation*: Sam has long had an interest in reading his flatmate Rayan's diary. However, Rayan has never given Sam consent to do so. One day, Rayan's identical twin sister Riya, of whose existence Sam had no clue, pretends to be Rayan and approaches Sam, telling him she is fine with him having a look and informing him of the diary's location in the drawer of Rayan's bedside table.

Perspectivist Restriction and Ignorance in turn logically entail the following:

> *Perspectivist Implication*: It is possible that *R* has not consented to *S* reading *R*'s diary without it being the case that *S* ought not read *R*'s diary.

Perspectivist Implication and Ought Implication stand in clear and undeniable contradiction to each other. Since both the truth of Ignorance and the entailment relations laid out cannot reasonably denied, perspectivists must reject one of Privacy, Correlativity, and Obligation-Ought—a trilemma. Given the plausibility of each of the three claims that make up the horns, this is a serious drawback for the view. Just how serious a drawback it is, however, depends on how high the costs of rejection are for each of these claims. I now turn to this question.

3. A PERSPECTIVAL VERSION OF RIGHTS?

3.1. Rejecting Privacy as a Solution to the Rights Trilemma

As mentioned before, the most prominent extant proposal on how perspectivists are to deal with something like the rights trilemma is due to Michael Zimmerman.[23] Zimmerman opts for a wholesale rejection of universal rights, which solves the rights trilemma by denying the truth of Privacy. Zimmerman is of course aware of the importance that rights have in our lives and thus does not propose that we give up talk and thought about rights altogether. Instead, he suggests that perspectivists reconceptualize the category from the ground up, bringing it in line with the basic tenets of their view. On this view, which we may call *rights perspectivalism*, people are strictly speaking not bearers of rights against violations of their privacy, bodily integrity, freedom of speech, etc., but instead can accurately be said to have only rights not to be subjected to *epistemic risks* of such violations.[24] To illustrate this, consider this perspectival version of Privacy:

23 See Zimmerman, *Living with Uncertainty*, ch. 2 and *Ignorance and Moral Obligation*, ch. 5.

24 Zimmerman's discussion is framed by a general statement of rights not to be harmed, the Harm Thesis, which he rejects. Instead, he defends the Risk Thesis, which implies

> *Privacy*$_{Persp}$: If, *according to S's perspective*, *R* may not have consented to *S* reading *R*'s diary, then *R* has a right against *S* that *S* not read *R*'s diary.

Unlike its universalist cousin, Privacy$_{Persp}$ does not lead to a contradiction with Perspectivist Implication when conjoined with Correlativity and Obligation-Ought. And as Zimmerman points out, the general idea that we have rights not to be exposed to (even merely epistemic) risks of harm is hardly outlandish. We plausibly have a right not to be served highly perishable food that the chef knows has not been refrigerated for a prolonged period even if, by chance, no dangerous bacteria have yet formed on it. We can formally state the position as follows:

> *Rights Perspectivalism*: *R* has a right against *S* that *S* not ϕ only if all factors relevant to this right's obtaining are epistemically accessible to *S*.

On rights perspectivalism, rights are therefore also subject to an epistemic filter, just as reasons are on perspectivism. This allows the view to avoid the potential mismatch between rights and oughts that gives rise to the rights trilemma. However, it manages to do so only at very high theoretical cost. In what follows, I highlight three pressing problems for rights perspectivalism: two extensional shortcomings and one more fundamental theoretical issue concerning the complexity of rights.

3.2. Undergeneration Worries

A first and perhaps most obvious worry is the perspectival view's *undergeneration* of rights. On rights perspectivalism, individuals lack rights in many circumstances in which we would intuitively take them to hold them. This class of cases evidently includes Twin Impersonation, as it must to avoid the problems described in the last section. This already puts the perspectival view out of line with most people's considered intuitions. Surely, it is not the case that Rayan's right to privacy protects her only against intrusive peeks into her diary by Sam when her twin refrains from interfering yet stays silent as soon as the twin's actions have affected Sam's epistemic situation. Rights, it seems, are supposed to be more robust than that.

Quite generally, one might take issue with the way in which the perspectival view allows for a loss of our rights protection through events over which we have no power and of which we may have no knowledge. The problem is not that rights fail to protect us under all circumstances—I can waive my rights through consent or plausibly also forfeit them through some impermissible actions. On the perspectival view, however, the normative protection provided

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perspectival rights in the sense laid out below.

by rights will not only obtain in far fewer cases but regularly fail in situations where the failure is completely independent from my own actions.

Even more serious worries of undergeneration arise if we allow for the possibility of agents' perspectives yielding false normative claims, as Zimmerman in fact allows.[25] If rights protect us only against acts that appear wrong from a would-be perpetrator's perspective and if perspectives on normative facts can be misleading, then we face the possibility of widespread rights erasure in normatively wayward societies. For one thing, this means that chattel slaves in the ancient Hittite kingdom did not have a right to freedom if the slaveholders' culturally ingrained ignorance of the moral impermissibility of slavery was so deep that the correct moral verdict was not accessible to the slaveholders.[26]

Even worse, it also has implications for the beliefs of the Hittite slaves themselves. Imagine that some of these slaves started to deliberate about the morality of their own situation, setting off from perfectly true premises about factors like their human dignity and the intrinsic value of autonomy. Imagine then that these slaves finally came to the conclusion that they had a moral right to be free from the yoke of slavery. Ironically, rights perspectivalists would have to claim that these slaves would be mistaken in this conclusion. After all, it is a *slaveholder's* epistemic position that determines which rights a slave possesses, since the former would be the potential holder of the obligations corresponding to the latter's putative right to freedom. On a perspectival view of rights, a liberation movement started by such slaves and aimed at a change of public opinion in Hittite society could therefore not accurately be described as having the aim to have their preexisting moral rights respected by the Hittite slaveowners. Instead, it would have to be understood as a movement aimed at *bringing into existence* the very moral rights that intuitively ground the righteousness of their project in the first place. In addition to the intrinsic objectionability of denying the slaves a right to freedom, rights perspectivalism seems to get things backwards in a seriously unsatisfactory manner with respect to this.[27]

3.3. Overgeneration Worries

Besides the mentioned worries about undergeneration, rights perspectivalism also *overgenerates* rights in objectionable ways. On the perspectival view of

25 See Zimmerman, *Ignorance and Moral Obligation*, 63–65.

26 The familiar example of ancient Hittite slaveholders stems from Rosen, "Culpability and Ignorance," 64–65.

27 Note that the objectionability rides exclusively on the perspectivalist idea that these slaves would have to bring about a change in their *moral* rights. A liberation movement will of course correctly aim at a change to the slaves' legal and political rights but is precisely justified because doing so will bring them in line with preexisting, independent moral rights.

rights, we can have rights against others to perform actions that we know to be extremely undesirable for us. Let me illustrate this possibility with an example:

> *Penicillin*: Fang is on holiday in a remote area of a foreign country and contracts a serious infection that needs immediate treatment. Fang goes to see a doctor and tries to let the doctor know that she suffers from a fatal allergy to penicillin and therefore by no means must be treated with this drug. However, due to a language barrier, Fang does not get her point across. The doctor, in line with the best evidence available to her, takes Fang's signals of distress to simply be a plea for urgent treatment and administers penicillin to treat the infection.

Let us assume, uncontroversially, that Fang has a right to good treatment by the doctor. Since on rights perspectivalism, rights are relativized to the epistemic position of the obligated party and not of the claim holder, defenders of this view are forced to conclude that in the situation just described, Fang has a right against the doctor that she be administered penicillin. This is true despite Fang having every reason to hope that the doctor does not administer penicillin. What is more, Fang's appropriate preference against being administered penicillin is grounded in the *very same* interest in health that plausibly undergirds the right to good treatment. Again, the verdict returned by rights perspectivalism turns out to be strongly counterintuitive.

Note that the issue here is not simply that the doctor is morally required to give the penicillin in such a situation. A judgment to this effect alone, perspectivists might and indeed should argue, would be perfectly in keeping with her duties as a medical professional. Instead, the issue lies with the specific notion of a *right* to treatment with penicillin. The very point of rights is that they can be sensibly asserted by their holders, and that those subject to the rights can be demanded to comply with them. The right to be given penicillin, however, does not appear to be of a kind that Fang could sensibly assert and demand compliance with *as a right to good treatment*, since it is completely free-floating from (and even contrary to) her actual health-related interests.[28] It is therefore a mistake to interpret the right to good treatment in the perspectival fashion, at least in the case of Penicillin.

3.4. Two Kinds of Rights

Although we should not interpret the right to privacy and the right to good treatment in a perspectival fashion, that does not mean that there are no rights

28 There might be other rights at issue that Fang could sensibly assert. I turn to these in the following subsection.

that depend on the obligated party's epistemic situation. As I will argue now, we plausibly have both a right to privacy and a right not to be exposed to (epistemic) risks of privacy violation. This means that $\text{Privacy}_{\text{Persp}}$ and Privacy are both genuine, but they are separate rights, protecting their rights holders against different injuries. While the point of Privacy is to protect individuals from certain outcomes (i.e., from actual breaches of privacy), $\text{Privacy}_{\text{Persp}}$ guards rights holders against a kind of disrespect: by subjecting *R* to an (epistemic) risk, *S* expresses a kind of disrespect to *R* that represents a (lesser) injury even if this risk does not materialize. In acting in a way that *S* has reason to believe will violate *R*'s privacy, *S* expresses an objectionable form of disregard to *R*'s moral standing—an expression that *R* might wish to guard themselves against.

We can see the difference between these two separate kinds of rights clearly when we consider how they come apart in various situations. We have already encountered an example of an action infringing on Privacy without infringing on $\text{Privacy}_{\text{Persp}}$ in the case of Twin Impersonation. On the other hand, we may imagine a case in which *R* has in fact validly consented, but *S* is unsure whether valid consent was given (perhaps *S* has a suspicion that *R* was under duress while giving consent). In this situation, *R* might still rightfully feel wronged by *S* if *S* reads her diary. After all, *S*'s action expresses an objectionable disregard of *R*'s interest, even though *R*'s privacy is not actually violated. Finally, in the worst but probably most common case, *S* might violate both Privacy and $\text{Privacy}_{\text{Persp}}$, for example if *S* consciously defies *R*'s wishes in full knowledge of the circumstantial factors.

Importantly, the differences between the various cases just mentioned are reflected in different kinds of redress that are appropriate. When perspectival rights are violated, the wrongdoer's duties of redress plausibly focus on a sincere apology that underscores the appreciation for the moral standing of the rights holder, since the main issue with the action performed was the fact that it expressed a serious disrespect for this moral standing. Redress for infringements of nonperspectival rights, on the other hand, involve a focus on compensation for the actual harm and damages that are brought about by the action, while violations of both rights combined require the most stringent forms of redress that involve both elements.

Where rights perspectivalism goes wrong is therefore not in positing perspectival rights but rather in denying nonperspectival rights. In identifying these two kinds of rights with each other and opting for the reality of only the former, rights perspectivalists efface the intuitive difference between the two. Here, I have of course only barely grazed the rich and complex structure of the various kinds of rights we have and the ways in which others can fail to fully respect them. What I hope has become apparent, however, is that we cannot

do justice to this richness and complexity if we reduce all rights to only one kind of right, as rights perspectivalism demands of us. This gives us a further reason to reject the view.

3.5. The Costs of Revisionism

In sum, the perspectival view of rights saddles us with broad-scale revisionism about both the nature and extension of rights, and this is a serious cost to the view. Still, it is important to acknowledge that despite the intuitive implausibility of the results reached, this does not yet constitute a knockdown argument against perspectivalism. It may still be that, in sum, the costs just outlined are ones we must bear, given the downsides to the alternatives. These alternatives are the other two horns of the trilemma, on the one hand, and the options of rejecting perspectivism for objectivism, on the other. With that, I now turn to what I claim is ultimately the best option for perspectivists—namely, rejecting Obligation-Ought and its weaker alternative, Obligation-Reason.

4. THE *PRO TANTO* VIEW OF RIGHTS AND OBLIGATIONS

Let me begin with Obligation-Ought. Above, I already acknowledged that this claim is more controversial than might appear at first glance. In this section, I briefly lay out and defend an alternative view, which we may call the *pro tanto view of rights and obligations*. As we shall see, rejecting Obligation-Ought in favor of this view, although by no means an unattractive move, will not by itself solve the rights trilemma. The *pro tanto* view of obligations turns out to be compatible with the weaker claim of Obligation-Reason, which still suffices to construct a rights trilemma. However, laying out and defending the *pro tanto* view of rights still proves to be of value, since it provides the basis for developing the *prima facie* view of rights and obligations as a successful solution to the trilemma.

The *pro tanto* view of rights has its most prominent defenders in H. L. A. Hart, Joel Feinberg, and Judith Jarvis Thomson.[29] Its basic idea is well expressed by Bernard Williams:

> We should recall that what is ordinarily called an obligation does not necessarily have to win in a conflict of moral considerations.[30]

29 See Hart, "Are There Any Natural Rights?"; Feinberg, "Supererogation and Rules"; and Thomson, *The Realm of Rights*. Some more recent defenders of the *pro tanto* view include Frederick, "*Pro Tanto* Versus Absolute Rights"; Rettig, "Rights and Practical Reasoning"; and Kiesewetter, "*Pro Tanto* Rights and the Duty to Save the Greater Number."

30 Williams, *Ethics and the Limits of Philosophy*, 180.

As the name suggests, the *pro tanto* view takes both 'right' and the corresponding term 'obligation' to express *contributory notions*. As such, obligations can compete against other considerations in determining what an agent ought to do, all things considered, in much the same way that ordinary moral reasons compete.[31] In this sense, the *pro tanto* view allows for truly universal claim rights, since their status as considerations with contributory force is independent from many contextual features, in particular from the question of what could speak for alternative courses of actions. On the *pro tanto* view, rights and their corresponding obligations *always* have a weight, though they may sometimes be outweighed by other rights, and perhaps even non-rights-related considerations.

Its ability to make sense of the existence of widespread conflicts of obligations is one of the most important reasons to reject Obligation-Ought and embrace the *pro tanto* view of rights. To illustrate such a conflict, take the following case.

> *Blood Type*: Sam has long had an interest in reading his flatmate Rayan's diary. However, Rayan has never given Sam consent to do so. One day, Rayan's twin sister Riya suffers a serious injury and needs urgent medical treatment. The paramedics call Rayan's flat and ask Sam about the by now unconscious Riya's blood group. Sam knows that Rayan and Riya have the same blood group and that information on Rayan's blood group could be found somewhere in Rayan's diary, which he knows is in her bedside table.

I think that intuitions are almost univocally clear that in Blood Type, Sam is permitted to read Rayan's diary. On the *pro tanto* view, this can be explained in the following way: although Sam has an obligation toward Rayan not to read her diary, he has a weightier obligation toward Riya to do what is necessary to save her life. In Thomson's words, the obligation toward Rayan to respect her right to privacy would therefore be *permissibly infringed* if Sam were to access her diary in this situation.

This way of thinking about rights may give rise to a worry. In going *pro tanto*, are we not giving up a core feature of rights—namely, the special normative force that they are supposed to have? Surely, the obligations corresponding to moral rights are not just garden-variety moral reasons like any other but particularly important moral considerations that have what we may call *peremptory force* or *special stringency*.[32]

31 That obligations and ordinary moral reasons compete in the same way does not mean that an obligation to ϕ just is a simple moral reason to ϕ. I will return to this point presently.

32 For peremptory force, see Raz, *The Morality of Freedom*. For special stringency, see Owens, *Shaping the Normative Landscape*. I thank an anonymous referee for JESP for pressing me to explicitly address this issue.

It is true that in rejecting Obligation-Ought, the *pro tanto* view of rights gives up the most straightforward and indisputable way of establishing a special normative force for rights and obligations. However, this does not mean that in adopting this view, we lose the ability to distinguish obligations from other moral reasons. Even less does it commit us to the claim that the former will be regularly outweighed by the latter. The *pro tanto* view is committed only to rights *sometimes* being permissibly infringed. It leaves open how frequently such infringements will occur and what type of normative considerations can outcompete obligations. For all that is implied by the view, rights may very well regularly override most other normative considerations, being infringed only in relatively rare circumstances and perhaps even only on account of other moral rights.[33]

There are several ways in which to theoretically capture the peremptory force of obligations within a nonabsolutist framework. Perhaps the most prominent and promising one is Joseph Raz's notion of an *exclusionary reason*.[34] For Raz, an exclusionary reason is a "reason to refrain from acting for some reason," and as such, it also excludes the normative strength of the reasons that it forbids from consideration.[35] Still, exclusionary reasons must be weighed against non-excluded reasons should these come into conflict. Understanding obligations as exclusionary reasons along Razian lines gives us the theoretical resources to accurately account for most of the ways that rights intuitively constrain us, without committing to something like Obligation-Ought. While much more would admittedly need to be done to flesh out the details of this view, rights and obligations thus can retain a plausible kind of peremptory force even on the *pro tanto* view.[36]

4.1. Specificationism and the Infringement View

What would be the alternative to the infringement view involving *pro tanto* rights in accounting for cases like Blood Type? If we want to uphold something along the lines of a general right to privacy but hold onto both Obligation-Ought

33 There is a further important element to rights and obligations that sets them apart from other moral reasons: they leave a *moral residue* even when outweighed, giving rise to claims to explanation and compensation. I discuss this further below.

34 One pertinent alternative way of explaining the peremptory force of obligations without subscribing to Obligation-Ought is David Owens's habit-based account (*Shaping the Normative Landscape*, ch. 3).

35 Raz, *Practical Reasons and Norms*, 39.

36 For a fully fleshed-out account of the role of *pro tanto* rights in deliberation, drawing centrally on the notion of exclusionary reasons, see Rettig and Fornaroli, "Conflicts of Rights and Action-Guidingness."

and the intuition that Sam is permitted to read the diary in Blood Type, our only option appears to be to specify the right to privacy in such a way that it does not cover Blood Type to begin with.[37] Such an all-things-considered right to privacy would have to look somewhat like the following:

> *Privacy*$_{ATC}$*:* If *R* has not consented to *S* reading *R*'s diary and reading the diary saves no lives that require saving and does not prevent serious international diplomatic incidents and . . . , then *R* has a right against *S* that *S* not read *R*'s diary.

The list of further necessary restrictions included in the placeholder ellipsis is as long as will be necessary to cover the range of possible situations in which we wish to uphold an intuitive judgment that reading a diary without consent would be all-things-considered permissible. On such a *specificationist* view of rights, the problem with cases like Blood Type is solved by simply denying that there is any conflict of rights.[38] In fact, on specificationism, rights and obligations *never* come into conflict, at least not in the sense of individual obligations yielding overlapping and contradictory recommendations in any given situation. Rather, a large number of precisely specified individual rights form a vast interlocking whole without overlaps, much like a perfect jigsaw puzzle.[39] For this reason, we will always be able to isolate a singular right (and a corresponding obligation) that is fully applicable and explains the impermissibility of a certain right-violating course of action.

Specificationism is subject to several problems. For reasons of space, I can only offer a relatively brief gloss of what appear to me three particularly pressing issues. While I regret not being able to do full justice to all possible ways for specificationists to respond to the charges I level, I hope that an overview of the

37 An alternative way of denying the *pro tanto* view—which, however, does away with the idea of a general right to privacy—would be an absolutist form of particularism. On such a view, truths about rights must always be understood relative to particular circumstances, so that there can only ever be a right not to be treated in this precise way in this specific situation. Such rights need not contain counterfactual exception clauses but also cannot be outweighed by other considerations. See Shafer-Landau, "Specifying Absolute Rights," 213. I do not further pursue this possibility here because it not only does away with the idea of universal rights that motivates much of the discussion in this article but also is subject to the same objections I field against specificationism below. I thank Benjamin Kiesewetter for pressing me to consider this possibility.

38 See, e.g., Shafer-Landau, "Specifying Absolute Rights"; Wellman, "On Conflicts Between Rights"; Oberdiek, "Lost in Moral Space" and "Specifying Rights Out of Necessity."

39 For the jigsaw puzzle image, see Wenar, "Rights," sec. 5.2.

most pertinent problems of specificationism at least goes to show that adoption of the *pro tanto* view is a sufficiently attractive option for perspectivists.[40]

A first point of criticism simply regards the implausibly complex nature of rights under specificationist assumptions. Since any right properly conceived would have to include a sufficiently large number of fine-grain specification clauses, specificationists are faced with the charge that no philosopher, let alone any layperson, could accurately claim themselves to know even one simple right that they possess. While specificationists are of course still free to acknowledge that our common "loose talk" of rights has its uses and need not be abandoned, this implication of the in-principle unknowability of our rights is a serious cost to the view.[41]

A second important point regards what defenders of the *pro tanto* view often call the "residue" of permissibly infringed rights.[42] Take Blood Type again. If Rayan comes back later in the afternoon and finds that Sam has rifled through her diary, it seems that the events are not morally neutral with respect to the relationship between the two. At the very least, Sam owes Rayan a lengthy explanation, perhaps even an apology. In other cases of permissibly infringed rights, like Feinberg's famous case of the hypothermic wanderer forcefully breaking into your warm but firmly locked cabin to save his own life, compensation may furthermore be owed for fully permissible infringements of rights.[43] The *pro tanto* view has an easy way of accounting for this residue—it

40 For more fully fleshed-out elaboration, see Thomson, *The Realm of Rights*, 82–104; and Frederick, "*Pro Tanto* Versus Absolute Rights." For a concise summary, see also Wenar, "Rights," sec. 5.2.

41 Some specificationists deny that the number of exception clauses their view must countenance is excessively large. Russ Shafer-Landau claims that "the specificationist might instead insist that the relevant exceptive clauses be relatively few in number and couched in terms of repeatably instantiable kinds of exceptions" ("Specifying Absolute Rights," 212). This suggestion is subject to a dilemma, however. Consider a general repeatably instantiable exception clause to a general right to privacy that forbids violation *unless a significant harm can be avoided*. Either the level of harm necessary is specified in absolute terms, or it is specified in terms relative to the importance of privacy infringement. If it is specified in absolute terms, extensionally implausible results follow. We simply will not be able to find an appropriate level of harm such that it or any harm above it *always* justifies any kind of privacy violation, while a lesser level of harm can *never* justify any infringement of privacy. If the level of harm necessary is specified in terms relative to the importance of privacy infringement, however, we reintroduce a weight to the right to privacy against which the importance of the harm must be compared. This reveals that we have given up the absolute conception of rights inherent to specificationism and landed with a framing that is much more amenable to the *pro tanto* view of rights.

42 The locus classicus is Thomson, *The Realm of Rights*, 84–87.

43 See Feinberg, *Rights, Justice, and the Bounds of Liberty*, 230.

is explained by the rights to privacy and property, which, though outweighed by competing considerations, remain in place and normatively relevant in the described situations.

Specificationism, according to which Blood Type and Feinberg's example of the cabin break-in are not situations in which any right to privacy or right to property find application, has a significantly harder time fully explaining the intuitive residue in these cases. While specificationists are free to invoke independent rights to compensation and explanation to reach extensionally correct descriptions of the situation after the break-in into the cabin, doing so in a satisfactory manner is a much more challenging task than it is for advocates of the *pro tanto* view.

For illustration, take John Oberdiek's prominent proposal, according to which specificationists should account for moral residue by drawing on the more general phenomenon of value pluralism.[44] Oberdiek points to the fact that in situations such as Blood Type and Feinberg's cabin, different values are at stake in the respective incompatible options—health and privacy, and health and property, for example. Sam and the hiker thus find themselves in situations where they must choose between values. They cannot avoid causing some damage to something valuable, even if they choose perfectly. This fact, Oberdiek claims, can account for moral residue in these situations without giving up the specificationist idea that the agents acted in full accordance with all their obligations.

However, Oberdiek's proposal overgeneralizes, for the dynamic described by him does not only occur in situations in which rights are at stake. Consider a person who has decided to donate half of their moderate income to charity. To do so, they must choose between several highly deserving charities. They could support health care campaigns in developing countries, contribute to fighting anthropogenic climate change, or provide financial support to victims of war and persecution. In assigning their donation, this person likewise finds themselves forced to choose one value at the expense of others. This fact is of course not morally neutral and, as such, leaves some sort of moral residue in the form of reason for regret. However, given the supererogatory nature of the would-be donor's intent, this moral residue is substantially different from that faced in Blood Type and Feinberg's cabin. The latter cases give rise to a much more significant kind of moral residue that calls for not only regret but explanation, compensation, and potentially more.

44 See Oberdiek, "Lost in Moral Space," 331–34. Other attempts to explain away intuitions of residue, such as the utilitarian justification that Russ Shafer-Landau adduces ("Specifying Absolute Rights," 216–17), face even more obvious extensional worries, which for reasons of space I cannot go into here.

The mere appeal to value pluralism that Oberdiek provides cannot do the necessary explanatory work to account for the important differences between these two types of cases. The *pro tanto* view, on the other hand, affords a straightforward explanation that draws on the intuitively most pertinent difference: Rayan has a right against Sam not to have her diary read, while the individual charities lack a right against the would-be donor to receive the donation. Of course, specificationists could in principle offer a further account that supplements or altogether supplants the value pluralist proposal. However, the dialectical onus is squarely on the shoulders of specificationists here, as they must find a proposal that matches the intuitive and straightforward explanation offered by the *pro tanto* view.[45]

What is more, there are more general reasons to doubt that this burden can be met. Any account drawing on an alternative source for the explanation of moral residue in cases such as Feinberg's cabin is likely to struggle in capturing the intuitively tight explanatory connection between the putative rights infringement and the obligation to explain and/or compensate. This becomes obvious when we consider a case in which the hiker immediately compensates the owner after the break-in.[46] On the specificationist picture, all rights are fully respected here, and any alternative source of a duty to compensate is satisfied—we seem to be faced with a morally neutral situation. However, this seriously misdescribes the moral dynamic as it intuitively presents itself. It is precisely because some form of (overall permissible) moral infraction has occurred that compensation and explanation are owed. Only the *pro tanto* view can properly account for this tight explanatory connection and thus explain why even immediate and full compensation does not leave us with a morally neutral situation.

Third and finally, specificationism cannot do justice to the way that rights feature in moral deliberation. On specificationism, obligations are something like the output of moral deliberation: it is only once we have fully considered the intricacies of the specific situation that we find ourselves in and have thus ruled out all potential exclusion clauses that we can confidently conclude for a certain right to be pertinent to the decision we are facing. For example, if Sam wants to determine whether Rayan has a fully specified right against him not to read her diary in Blood Type, he would first have to determine whether or not it would be permissible for him to read her diary given the emergency faced by Riya. But once this latter task is done, practical deliberation is already successfully concluded. No conceptual space remains for consideration of any

45 For a much more extensive defense of the moral residue objection to specificationism, see Botterell, "In Defence of Infringement."

46 For this point, see also Frederick, "*Pro Tanto* Versus Absolute Rights," 392.

right to contribute in a substantial way to the success of Sam's reasoning. Rights thus appear explanatorily idle.[47]

In response, specificationists could argue that the role of rights in practical deliberation is different. Hypotheses about rights might instead function as goal-setting mechanisms of practical reasoning, drawing our attention to reason-giving considerations we might otherwise have missed.[48] However, this still renders rights largely dispensable in our practical reasoning. If the point of rights is simply, as Wellman claims, that a given right "marks, rather than explains, the relevant moral reasons," it is not clear why this function could not be equally well fulfilled by other considerations, such as directly considering the pertinent interests, relationships, etc.[49]

It barely bears mentioning that in stark contrast to this assumption, common thought would have rights occupy a very different role. Rights are usually taken to be elements that actively feature in our practical deliberation—they serve as premises in practical reasoning and play both justificatory and explanatory roles for our practical conclusions. When faced with situations of moral conflict such as Blood Type, it is natural to weigh rights against each other. We want Sam to take seriously both Rayan's right to privacy and Riya's right to rescue, and we want a decision based on the proper consideration of both.[50] Likewise, an advisor might simply point to rights that to them appear pertinent in a situation (perhaps reminding Sam of a promise he made toward Rayan in the past), without thereby prejudging the result of Sam's practical reasoning.

This kind of familiar consideration of moral rights within practical deliberation is also important in a number of political and legal contexts. Rights serve crucial explanatory and justificatory roles in establishing important normative conclusions in these fields.[51] Far from being idle wheels, they are the building blocks upon which many an influential argument is constructed. In the role it

47 The canonical formulation of the charge of explanatory idleness is found in Thomson, "Self-Defense and Rights." Rettig provides a well-developed and convincing elaboration of the charge that specificationism deprives rights of a significant role in practical reasoning ("Rights and Practical Reasoning").

48 See Wellman, "On Conflicts Between Rights," 281–82.

49 Wellman, "On Conflicts Between Rights," 282.

50 How exactly this is to be achieved is of course itself a difficult question. For a recent attempt at providing a method by which to guide reasoning in addressing conflicts of rights, see Rettig and Fornaroli, "Conflicts of Rights and Action-Guidingness."

51 We have seen this above, discussing the Hittite slaves in the context of undergeneration worries for rights perspectivalism.

assigns to rights in practical reasoning, specificationism thus seems to simply have things backwards, giving us further reason to reject it.[52]

4.2. Why Rejecting Obligation-Ought Is Not Enough

We thus have good reason to reject Obligation-Ought, one of the three horns of the trilemma as originally constructed. However, as mentioned, this is not enough to save perspectivism from the problem of universal rights. The reason for this is that the rights trilemma can be reconstructed without Obligation-Ought. Instead, we need only the weaker Obligation-Reason:

> *Obligation-Reason*: If *R* has an obligation not to ϕ, then *R* has a reason not to ϕ.

Obligation-Reason is a claim that is not only consistent with the *pro tanto* view of rights but even plausibly entailed by it, at least assuming that all truly normative *pro tanto* notions bottom out in or at least essentially involve reasons. To construct the rights trilemma on the basis of Obligation-Reason, a further slight modification is needed:

> *Perspectivist Restriction*$_2$: If *p* is a reason for *S* not to ϕ, then *p* must be epistemically accessible to *S*.

Although Perspectivist Restriction$_2$ is not strictly implied by every version of perspectivism, I believe that it is nonetheless hard to deny for any plausible version of the view. After all, it is only slightly more specific than the original restriction.[53] As long as perspectivism claims that oughts are perspectival because there is an epistemic filter on its constituents, and we furthermore assume that what we ought to do is determined by contributory considerations that either involve or bottom out in reasons, then perspectivism is firmly committed to Perspectivist Restriction$_2$. In fact, one of the most prominent defenders of perspectivism in recent years, Benjamin Kiesewetter, explicitly defends a view that clearly entails Perspectivist Restriction$_2$.[54]

Perspectivists who want a way out of the rights trilemma that does not involve giving up universal claim rights thus must jettison not only Obligation-Ought but also the much weaker and more plausible Obligation-Reason.

52 I thank an anonymous referee for *JESP* for pressing me to address the challenge that specificationism presents for my arguments in this article in much greater detail than I did at first.

53 However, perspectivists might avoid commitment to Perspectivist Restriction$_2$ by introducing further distinctions (for example between possessed and unpossessed or objective and subjective reasons). I consider this possibility in section 6 below.

54 See Kiesewetter, "What Kind of Perspectivism?"

Though it might seem like a nonstarter at first, I believe this in fact turns out to be a live option—and indeed the best one available to perspectivists. In the final two sections, I lay out my reasons for this belief, first simply sketching the structure of the view and then assessing its merits.

5. THE *PRIMA FACIE* VIEW OF RIGHTS AND OBLIGATIONS

5.1. Extending Rights Infringments

Let us take a step back and reassess the problem. The rights trilemma for perspectivists arises due to the possibility of cases of ignorance such as Twin Impersonation. To successfully uphold perspectivism and some version of a right to privacy, perspectivists must find a way to consistently claim two things: first, that Rayan has a general right to privacy; and second, that Sam acts permissibly in reading Rayan's diary in Twin Impersonation, given that he has absolutely no reason not to read the diary.[55] There are two principal ways of combining these claims. On the one hand, perspectivists can specify Rayan's right to privacy in such a way that it no longer covers Twin Impersonation, allowing us to retain the close conceptual connections between rights, obligations, and reasons that are commonly assumed. This leads us to $\text{Privacy}_{\text{Persp}}$, with all of the problems that I outlined above. On the other hand, perspectivists can reject Obligation-Reason and hold that even though Sam is obligated not to read the diary, Sam has (or at least can have) no reason not to read the diary.

Interestingly, what we find here is a dialectic that exactly mirrors the structure of the debate between specificationism and the *pro tanto* view of rights. The only difference is that while the former two are traditionally concerned with the question of whether the conclusive force of rights can be defeated by countervailing considerations, the current dialectic concerns the question of whether the conclusive *and contributory* normative force of rights can be defeated by limitations in the epistemic position of agents. My suggestion is to take seriously these parallels, jettison Obligation-Reason, and extend the category of rights infringements that Thomson makes such a plausible case for. This would allow us to say that universal rights and obligations do indeed cover cases like Twin Impersonation. However, in such cases, acting contrary to rights and their corresponding obligations represents not a violation of them, only a mere infringement.

55 At least not on account of Rayan's privacy. For the sake of simplicity, I shall assume (unrealistically) that there are no other reasons that might speak against reading the diary in this situation.

5.2. Prima Facie Rights and Obligations

On such a view, we must give up the idea that rights and obligations always make a normative contribution in the sense of giving others reasons to comply with their demands.[56] Instead, the view conceives of them as what we may call only *prima facie normative*. In what follows, I briefly lay out what this would entail and then show why it does not force us to give up on the most important features of rights. First of all, let me offer some brief clarifications on my use of the term *prima facie*. I am of course here following W. D. Ross, whose theory of *prima facie duties* is of foundational importance for modern versions of normative pluralism. On the Rossian usage, something being *prima facie x* does not mean that it is only apparently *x*, suggestive of *x*, or something of this sort. Instead, Ross glosses his usage of *prima facie x* as meaning something like "having a tendency to be *x*."[57] Somewhat more precisely, we can say that if something is *prima facie x*, it will be *x* unless certain special circumstances obtain.

Matters are complicated somewhat by the fact that Rossian *prima facie* duties are nowadays commonly assimilated with moral reasons. What it is for an action to be a *prima facie* duty in Ross's sense, many hold, just is for it to be supported by a moral reason.[58] However, this interpretation is meant to make good on the fact that Rossian duties are of a *prima facie requiring* nature, given that duties are the kind of things that generally require. This means that *prima facie* duties only have a tendency to require the relevant option but do not necessarily do so, just as moral reasons plausibly do.

What I suggest is that obligations corresponding to moral rights are in fact *doubly prima facie*. Like Rossian *prima facie* duties, they have a *prima facie* requiring nature, but unlike reasons, they also have a *prima facie contributory* nature. This means that they not only merely have a tendency to require (without necessarily doing so) but that they also merely have a tendency to normatively *count in favor* of the relevant option (without necessarily doing so). Building on the distinction just sketched, we can therefore separate three different views on rights: all-things-considered rights (specificationism), *pro tanto* rights, and *prima facie* rights. These three views are distinguished by progressively more

56 Though even when failing to do so, they will regularly still give rise to other reasons, e.g., reasons for the rights holder to demand justification or explanation. I return to this point in the next section.

57 See Ross, *The Right and the Good*, 28.

58 See Stratton-Lake, "Introduction," xxxiii–xxxviii; Shaver, "Ross on Self and Others"; and Cowan, "Rossian Conceptual Intuitionism," 825.

conditional takes on the normative force of rights. The distinction is illustrated schematically in table 1.

Table 1. Three Different Accounts of Rights

All-things-considered rights (specified)	*Pro tanto* rights	*Prima facie* rights
Actual requirements	*Prima facie* requirements Actual contribution	*Prima facie* requirements *Prima facie* contribution

To state the general idea behind the *prima facie* view more clearly, it is helpful to capture it somewhat more formally. We set off from a need for a nonspecificationist answer to cases like Blood Type, which pushes us toward a rejection of Obligation-Ought and therefore to acceptance of the following principle.

> *Requirement*$_{Prima\ facie}$: If *S* has an obligation *x* to *R* not to ϕ, then *S* ought not to ϕ unless normative considerations more important than *x* favor ϕ-ing.

As we have seen, the most suggestive explanation of why Requirement$_{Prima\ facie}$ is true is one that connects obligations to contributory considerations that jointly determine the overall ought—i.e., normative reasons as commonly understood. To capture our intuitions about Twin Impersonation without any implausible specification, the *prima facie* view of rights and obligations goes beyond this by adding an element of conditionality on the contributory level:

> *Contribution*$_{Prima\ facie}$: If *S* has an obligation *x* to *R* not to ϕ, then *S* has a reason not to ϕ, unless the grounds of *x* are not epistemically accessible to *S*.

As a corollary of Contribution$_{Prima\ facie}$ and a plausible connection between reasons and ought, we are also led to an adjustment of our account of the potentially requiring force of obligations. We must now also accept:

> *Requirement*$_{Prima\ facie}$′: If *S* has an obligation *x* to *R* not to ϕ, then *S* ought not to ϕ unless (1) (epistemically accessible) normative considerations more important than *x* favor ϕ-ing, or (2) the grounds of *x* are not epistemically accessible to *S*.

Contribution$_{Prima\ facie}$ and Requirement$_{Prima\ facie}$′ jointly characterize the *prima facie* view of rights and obligations, allowing for a rejection of Obligation-Reason and a solution to the rights trilemma. By extending the class of permissible rights infringements to cases like Twin Impersonation, we can retain the core perspectivist commitments without slipping into any form of perspectivalism.

5.3. Nonepistemic Restrictions to the Contributory Force of Obligations

It is important to note that the structural features of the *prima facie* view of rights and obligations just laid out do not commit us to a restriction that is exclusively catered to solving the rights trilemma of perspectivism—i.e., to the addition of only an epistemic exception clause to our accounts of both the requiring and contributory force of obligations. Once we go *prima facie*, there is no structural reason to restrict ourselves to only one kind of additional exception clause. While the *prima facie* view of rights does not require that there are further exception classes, it is nonetheless instructive to at least consider potential candidates. To offer but one example, we might also consider adding a clause of inability.

> *Requirement*$_{\textit{Prima facie}}$″: If *S* has an obligation *x* to *R* not to ϕ, then *S* ought not to ϕ unless (1) normative considerations more important than *x* favor ϕ-ing, or (2) the grounds of *x* are not epistemically accessible to *S*, or (3) *S* is unable not to ϕ, or (4) ….

An addition of this inability clause could be motivated by the idea that we can have rights even against those who find themselves unable to properly respect them. For example, a person who enters your house under an irresistible post-hypnotic suggestion might arguably be said to infringe on your rights to property and privacy (although we would likely not want to speak of a *violation* of your rights here). Those who want to uphold the idea that the right to property covers cases of hypnotically forced intrusion would have to add an exception clause like 3 above. After all, the widely accepted principle of Ought Implies Can yields that it is not the case that the hypnotized person ought not to enter your house (since they could not avoid doing so). What is more, if we uphold not only the uncontroversial Ought Implies Can but also the slightly more contested principle of Reason Implies Can, we also arrive at a second class of situations in which rights and obligations lack contributory force.[59] This would then yield a second dimension along which rights and obligations can be said to be doubly *prima facie*.

> *Contribution*$_{\textit{Prima facie}}$′: If *S* has an obligation *x* to *R* not to ϕ, then *S* has a reason not to ϕ, unless (1) the grounds of *x* are not epistemically accessible to *R*, or (2) *S* is unable not to ϕ.

In fact, it is highly likely that Thomson, perhaps the most important defender of an infringement view of rights, would endorse something like the added inability clauses. This becomes clearest in Thomson's writing on self-defense. In

59 For arguments for this principle, see, e.g., Streumer, "Reasons and Impossibility."

her seminal paper on the topic, Thomson argues that it is permissible to defend oneself against what she calls an Innocent Threat—a person who poses a lethal risk without exhibiting any aggressive agency at all.[60] The most commonly cited examples of Innocent Threats involve human projectiles who stand to lethally crush Victim in a way that would not lead to Innocent Threat's own death. Thomson's rights forfeiture account provides an explanation of the permissibility of lethal defensive measures on Victim's part that centrally relies on the ideas that Innocent Threat stands to violate Victim's right to life and that this can be the case even when Innocent Threat does not exhibit any agency at all.[61] As such, and given correlativity (which she endorses), Thomson must allow that Innocent Threat has an obligation not to kill Victim, even though Innocent Threat clearly lacks the ability not to do so.

I do not here want to take a stand on the plausibility of including a global inability clause. Perhaps rights can be infringed only through some kinds of unavoidable behavior and must be specified to exclude others. And perhaps only some rights (e.g., fundamental ones such as the right to life) can be infringed by those who cannot help but do so. Perhaps we should even reject the possibility of rights infringements by those who cannot do otherwise altogether. What I hope has become clear, however, is that there are at least no structural reasons why considerations of epistemic access should be alone in motivating a move toward a *prima facie* view of rights and obligations. Whichever way we ultimately position ourselves, I hope that this highlighting of potential *companions in guilt* to the epistemic exception clause that I propose goes at least some way toward rendering this suggestion more plausible.

6. CONSEQUENCES OF GOING *PRIMA FACIE*

I have sketched a *prima facie* view of rights and obligations that allows perspectivists to uphold both Correlativity and rights universalism. However, the way in which it does so might give rise to a worry: Does the *prima facie* view not seriously denigrate the importance of rights and obligations, especially in situations like Twin Impersonation that cause perspectivism trouble to begin with? Why should rights (and obligations) even interest us if they are not normative *sans phrase*—i.e., normative in the sense of always at least playing a contributory role in determining all-things-considered ought judgments? This

60 See Thomson, "Self-Defense."

61 Thomson, "Self-Defense," 301–3. To yield a *prima facie* view of rights involving an inability clause, we need not share what is perhaps the most controversial element of this claim—namely, that Innocent Threats are guilty of impermissible rights *violations* rather than simply cases of rights infringement.

worry becomes especially salient given the common picture of rights as a kind of normative shield, which I alluded to above. How are rights supposed to properly protect us, one might ask, if they do not necessarily give rise to any reasons for others not to subject us to these outcomes?

I believe that perspectivists who opt for the *prima facie* view can and should face this worry head on. Rights and obligations retain two of their most important features even in situations where they do not make normative contributions in the sense just mentioned. What is more, both of these features are crucial to the sense of protection intuitively provided by rights. These two features are, first, entitlements to demand of others that they respect the rights we have and, second, follow-up duties in the cases of nonrespected rights. Even on the *prima facie* view, rights thus still matter in the way that we intuitively take them to.

6.1. Entitlements to Demand Compliance

Let us dwell in some more detail on the idea of normative protection provided by rights. What rights are for, on this view, is to protect us from being treated in certain ways that are not compatible with our fundamental interests and/or dignity. What is more, rights protect us in such a way that we can actively avail ourselves of this very protection—they give us an entitlement to demand compliance from those against whom we hold the right. My right to privacy involves not only a claim against others that they do not sneak a peek at my most private thoughts but also (via the claim) a power to legitimately demand of them that they do not do so. One might now worry that the *prima facie* view, on which I can also have rights against those who have absolutely no reason not to read my diary, cannot account for this power and thus for this crucial function of rights.

However, this conclusion would be hasty. The *prima facie* view is in fact compatible with a far-reaching entitlement to demand compliance, even in situations in which epistemic limitations obtain that would lead to only a rights infringement, not a violation. The *prima facie* view can account for this because in the problematic situations, the act of demand itself changes the epistemic situation for the addressee. In the very act of citing a right against a previously innocently ignorant party, a right holder can give their addressee crucial new evidence. The demand itself gives the addressee grounds for assuming that there are normatively relevant features of the situation that they have hitherto missed, creating a requirement for them to at least show caution and inquire further before acting against the demand.

To illustrate, imagine a version of Twin Impersonation in which Rayan monitors her room via security camera and, when spotting Sam opening the drawer of her bedside table, simply declares via the intercom, "I have a right that you do not read my diary. You must stop what you are doing right now!" This

might leave Sam confused. After all, for all he knows, he was just given explicit consent by Rayan (impersonated by Riya). Nonetheless, it seems clear that after the announcement from the intercom, Sam can no longer simply permissibly continue with his original plan. After the intervention, his evidential position no longer unequivocally supports a belief in the permissibility of perusing the diary, at least until he has sufficiently clarified the situation. Rayan's demand is therefore legitimate—she does not ask too much of Sam in calling him out, even though prior to her intervention, he had no reason not to proceed.

Some might be given pause by the fact that the very act of intervention creates the situation that supposedly justifies it. Is this not a kind of problematic bootstrapping of justification? I think it is not. For one thing, notice that the legitimacy of the intervention crucially depends on the fact that there actually *is* further evidence available to Sam through a more thorough investigation (calling Rayan on the phone, for example), and that this further evidence ultimately clearly supports a prohibition against Sam reading the diary. To illustrate this necessity, imagine a slightly different scenario. In this alternative case, Rayan makes a similar intervention over the intercom when Sam picks up the latest edition of *Vogue* magazine, which is lying on the coffee table. The magazine, let us assume, contains a saucy story about Rayan's recent appearance on a reality TV show. A nonspecific demand by Rayan against Sam to stop reading the magazine on account of her privacy might similarly startle Sam and temporarily stop him from reading. In this case, however, investigating further and reasoning correctly would not lead him to the conclusion that he ought not to read the magazine. After all, our right to privacy does not plausibly give us a claim against others that they do not read unfavorable news articles about our voluntary appearances on public television. For these reasons, Rayan's demand would be illegitimate in this alternative scenario and not create a robust requirement for Sam to permanently desist from reading.

What is more, there are other situations that take a structurally similar form to the creation of reasons through demands on the *prima facie* view. For example, a legitimate authority may issue a command by saying something like "You are required to go home immediately," although it is precisely the act of demand by the authority itself that makes the relevant action required. And perspectivists must account for similar apparently "self-fulfilling prophecies" in the more general phenomenon of advice, as a better-informed party can truly offer guidance of the sort "you really ought to ϕ" even in situations in which the reasons for ϕ-ing are not yet available to the advisee.[62]

62 However, perspectivists may have to jump through some hoops to do so. For possible solutions, see Kiesewetter, "'Ought' and the Perspective of the Agent"; and Lord, "Acting for the Right Reasons, Abilities, and Obligation."

Contrary to first appearances, the *prima facie* view of rights is therefore, after all, capable of accounting for one of the most important conceptual features of rights—generally, rights holders are entitled to demand compliance from both would-be violators and would-be infringers equally.

6.2. Follow-Up Duties

The second feature of rights pertains to the abovementioned follow-up duties they generate. An important way in which rights matter is that the normative situation changes significantly when they are not respected. Rights violators usually have weighty duties of apology and repair to those they have wronged. However, as I argued above, even rights whose corresponding obligations are defeated by countervailing considerations are not thereby rendered wholly normatively inert in the wake of contrary action. In such cases of rights infringement, there is likewise a *remainder*, giving rise to duties of explanation, compensation, and, in certain cases, also apology.

The same plausibly applies to obligations defeated by epistemic inaccessibility. If I permissibly break into your cabin, whether it is to avoid freezing to death or because I innocently believe it is my newly acquired property after some pranksters carefully exchanged the signage, I incur duties of explanation and, plausibly, compensation for damages caused. In both cases, the fact that you have a right to the cabin offers a straightforward and convincing explanation of these follow-ups. Had you obtained the cabin by illicit means or recently sold the cabin to a third party, I would have no such duties toward you. Again, we can see that rights matter even without directly giving rise to reasons for action.

Now it might be objected that the follow-up duties that the perspectivist can allow for are themselves much less robust than one might hope. After all, their obtaining in turn must depend on the evidential situation of the infringing party. Sure, if I later find out that the mislabeled cabin was yours after all, I will be required to explain myself and potentially indemnify you (at least to some degree). But until I obtain that information, no follow-ups are incurred in the wake of my unwitting but nonetheless real infringement of your right. What use is the ability to draw on rights in explaining remainders then, if all we get is such an instable result?

It is true that on a perspectivist picture, follow-up duties must be epistemically constrained in just this way. However, that does not mean that the *prima facie* view's ability to draw on rights infringement even in cases such as Twin Impersonation or Feinberg's cabin is worthless. In the good case in which the agents do find out about their mistake, the rights infringement plays a crucial role in the most elegant and straightforward explanation of the normative remainder. A form of rights perspectivalism, which cannot draw on any sense

of rights infringement here, is left in a poorer explanatory position. What is more, even in the bad case, the *prima facie* view can again help us explain why it is appropriate for the victim to demand compliance with follow-up duties. For reasons laid out in the previous subsection, victims have an entitlement to demand explanation, indemnification, and so on, even before the infringing party finds out about their previous evidential shortcomings. Since in doing so they will change the evidential situation of their addressees, rights holders whose rights were infringed can stand on these very rights in the aftermath to demand that things be put right. In this way, rights retain additional value to them even if their reason-giving force is normatively constrained in the way perspectivists must claim.

6.3. Softening the Blow by Disambiguation?

Although the two features just sketched allow for *prima facie* rights to retain a normatively important role, it cannot be denied that the move of going *prima facie* and denying Obligation-Reason nonetheless represents a substantial step away from most people's intuitive conceptual starting points regarding rights. In response to this, one might be tempted to further soften the blow by adopting a disambiguationist response.[63] For one thing, one could follow some perspectivists in making a distinction between reasons for ϕ-ing that there are for an agent *S*, on the one hand, and reasons that an agent *S* has for ϕ-ing, on the other.[64] This would allow perspectivists to uphold the intuitive verdict that there are reasons for agents like Sam to comply with their obligations—reasons that can, for example, also be drawn upon by third parties offering advice. At the same time, it allows us to also retain the crucial perspectivist claim that the absence of actual consent by Rayan does not play a role in what Sam ought to do, all things considered. For even though the absence of consent explains why *there are* weighty reasons not to read the diary, a perspectivist would claim that these are not reasons *that Sam has*. On the view under consideration, only reasons possessed by *S* can impinge on the question of what *S* ought to do, and *S*'s perspective is a core limiting factor on what reasons *S* can possess. While we still must deny what we may call Obligation-Reason$_{\text{Possessed}}$, we can therefore at least uphold Obligation-Reason$_{\text{Existing}}$. This is of course but one way of pursuing the more general strategy of capturing opposing intuitions (or at least coming closer to doing so) by disambiguating some of our talk of reasons or ought. Those not taken with the quasi-possessive notion of having reasons

63 I thank Benjamin Kiesewetter for pressing me to address this issue in more detail.

64 See Lord, *The Importance of Being Rational*.

just sketched might, for example, simply distinguish between subjective and objective reasons, assigning different incompatible roles to each of them.[65]

Whichever disambiguationist strategy one might opt for, it is important not to overstate their overall potential. Whichever way we choose to draw the lines between more objective and more subjective versions of normative concepts, the foregoing discussions of the rights trilemma and the failures of rights perspectivalism clearly bear out one thing: the most familiar notion of rights—the one we are used to employing in everyday discourse—operates squarely on the objective side of things. The most important notion of rights is thus at a remove from the most important notions of ought, reason, etc., which any perspectivist worth their salt must firmly locate on the nonobjectivist side of the divide. There might be some notion of subjective rights to keep the perspectivist reasons and oughts company on their side of the chasm, and there may also be an objective (or nonpossessed) kind of reason joining objective rights on the other, but the intuitively more important notions of rights and reasons remain at a distance. Since attempts to forcibly draw the notion of rights fully over onto the nonobjective side fail (i.e., rights perspectivalism fails), even a committed perspectivist disambiguationist must admit that Obligation-Reason does not hold when keeping fixed the intuitively more important versions of each notion.

Given this result, it is all the more important to keep in focus that there are bridges, one might say, between strictly objective notions of rights and nonobjective notions of reasons and oughts. The two most important of these are the abovementioned entitlements to demand compliance and the possibility of follow-up duties. Nonetheless, it would be remiss to deny that the perspectivism-friendly notion of rights that I have sketched represents a substantial rethinking of moral claim rights—one that requires us to give up some widely held beliefs about their normative force. Disambiguationism provides no way out of this conclusion. However, since others have recently argued that a thorough rethinking of moral claim rights is long overdue for other, unrelated reasons, this may finally not even end up as an unwelcome result, as long as we can retain enough of the most important features that give us reason to engage in rights discourse in the domain of morality in the first place.[66]

65 See Schroeder, "Having Reasons."

66 For a recent argument in favor of a wholesale reconsideration of moral claim rights, see Valentini, "Rethinking Moral Claim Rights."

7. CONCLUSION

I have argued that the rights trilemma for perspectivism, combined with the untenability of rights perspectivalism, forces any committed perspectivist to thoroughly reconceptualize the normative relevance of rights and obligations. Instead of having rights universally give rise to (moral) reasons that can affect what those against whom we hold rights ought to do, perspectivists can only allow for the *prima facie* normativity of rights and obligations and must therefore concede that rights and obligations sometimes fail to give obligation holders any reason for compliance at all.

Though this represents a relatively radical reinterpretation of the normative relevance of rights, I believe it need not be one that relegates rights and their corresponding obligations to a position of unimportance. I have outlined two important roles played by rights and obligations to then show how they can play both of these roles even when they do not correspond to reasons for complying with them due to epistemic defeat. Even when they are only *prima facie* normative, rights still offer their holders a form of protection that they are right to value. This, of course, is far from a conclusive case for the *prima view* of rights. Many philosophically interesting questions remain open. If what I have argued is correct, however, the relative merits of the *prima facie* view of rights when compared to the other horns of the rights trilemma give perspectivists good reason to carefully inquire into these questions and develop the *prima facie* view in greater detail.[67]

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