Are Some Prima Facie Duties More Binding than Others?

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In *The Right and the Good*, W. D. Ross commits himself to the view that, in addition to being distinct and defeasible, some prima facie duties are more binding than others. David McNaughton has argued that there appears to be no way of making sense of this claim that is both coherent and consistent with Ross's overall picture. I offer an alternative way of understanding Ross's remarks about the comparative stringency of prima facie duties, which, in addition to being compatible with his view as presented in the text, provides us with a coherent, and indeed plausible, account of what it means for some duties to be more binding than others.

I

In *The Right and the Good*, W. D. Ross argues that there is no general character that makes all right actions right, no single duty to which all other duties can be reduced.[1] Rather, there is a plurality of basic duties which give rise to all the others (duties of beneficence, fidelity and non-maleficence, to name a few). Furthermore, these duties, while basic, are not to be regarded as absolute: In cases where duties conflict, one may need to violate one duty in order to fulfill another which, in the circumstances, is the weightier of the two. For instance, one may be justified in breaking a promise one has made when keeping that promise would require causing a great deal of harm to others. Although, in cases of this sort, the duty one has to keep one's promises is outweighed by the duty not to harm others, the duty to keep one's promises does not disappear. It remains as a 'prima facie duty', which still counts in favor of keeping one's promise, though not definitively in this case.[2]

Now while all of these basic moral duties are defeasible, on Ross's view, he maintains that some of them are more binding than others. This claim has been the subject of some dispute, since it is not immediately clear what Ross means in saying that some prima facie duties are more binding than others, nor how to reconcile this with his plain view that all such duties are open to being trumped by other duties in particular cases. David McNaughton has suggested that what Ross appears to be doing is

[1] W. D. Ross, *The Right and the Good* (Oxford, 1930), p. 16.
[2] Ross, *The Right and the Good*, pp. 19–20.

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trying to find room for a midway position between the complete generalism of absolutism (or indeed of a lexical ordering of duties) which gives no consideration to the circumstances of the particular case, and a doctrine of prima facie duties that makes the outcome of any conflict depend solely upon the wholly individual circumstances of the particular case.[3]

But since there appears to be no way to make sense of this claim that is both coherent and reasonable to think Ross actually held, McNaughton argues, it is best simply to regard Ross as mistaken on this point.[4] My aim in this article is to resolve this apparent tension. Toward this end, I offer an alternative conception of the comparative stringency of prima facie duties: one in which whether a particular duty is more binding than another is a function, not of its intrinsic weightiness but, rather, of the individual circumstances of a given case.

II

In the course of developing his account of prima facie duties, Ross appears to commit himself to the view that, in addition to being distinct, some duties are intrinsically weightier than others. When considering the relationship between the duties of beneficence and non-maleficence, for instance, he says that

when we have come to recognize the duty of beneficence, it appears to me that the duty of non-maleficence is recognized as a distinct one, and as *prima facie* more binding. We should not in general consider it justifiable to kill one person in order to keep another alive, or to steal from one in order to give alms to another.[5]

From this (and a few other passages like it) it is clear that Ross thinks that some duties are prima facie more binding (or more stringent, as he sometimes puts it) than others. Far less clear, however, is why Ross takes this to be the case. Because he says so little about the comparative stringency of prima facie obligations, we are left to use what few clues he leaves us to determine for ourselves his reasons for making these claims. In the above passage, for instance, one might reasonably take Ross to be offering the example of unjustified killing in order to establish his prior claim that the duty of non-maleficence is prima facie more binding than the duty of beneficence. Alternatively, the claim that it is generally morally impermissible to kill one person in order to save another might well be aimed, not at establishing, but at confirming the view that the duty of non-maleficence is prima facie more binding than

[3] David McNaughton, 'An Unconnected Heap of Duties?', *The Philosophical Quarterly* 46 (1996), pp. 433–47.
[4] McNaughton, 'An Unconnected Heap of Duties?', p. 446.
[5] Ross, *The Right and the Good*, p. 22.

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that of beneficence. After all, this is precisely what we would expect to be the case were the duty of non-maleficence prima facie more binding than the duty of beneficence – namely, that generally killing one person in order to save another would be morally unjustified. Then again, the example could be meant merely to emphasize the distinctness of the two duties rather than a difference in their stringency. It isn't entirely clear.

What does seem clear, however, is that insofar as the case is intended as a defense of the claim that the duty of non-maleficence is, in addition to being distinct, prima facie more binding than the duty of beneficence, it fails. The judgment that it is not generally morally permissible to kill one person in order to save another does not commit one to the view that the duty of non-maleficence is more binding than that of beneficence; this follows from the mere fact that the two duties are distinct. As McNaughton notes,

> We do think it wrong to kill one person to save another, but that may simply be because, given that the benefit to one is roughly counterbalanced by the loss to the other, the duty not to harm tells against killing the one, but not against failing to save the other.[6]

Because the amount of good produced by killing is roughly equal to that produced by refraining from killing, the duty of beneficence is neutral in regard to the two courses of action. Since, then, the duty of non-maleficence favors not killing, it is this which we ought to regard as our 'duty proper'. The important thing to see here is that coming to this judgment does not require taking into account the general bindingness (or weightiness) of each of the conflicting duties; the mere fact that these duties are distinct is sufficient.

Elsewhere, Ross offers another example which, on the face of it at least, looks to be a more promising source of support for the idea that some duties are prima facie more binding than others:

> We . . . think . . . that normally promise-keeping, for example, should come before benevolence, but that when and only when the good to be produced by the benevolent act is very great and the promise comparatively trivial, the act of benevolence becomes our duty.[7]

Here, too, though, it is not obvious how we should interpret what he says. Ross plainly thinks that duties of promise-keeping are in some sense weightier than, and take priority over, duties of beneficence, but just what this weightiness amounts to and what role, if any, it ought to play in practical reasoning remains somewhat elusive.

[6] McNaughton, 'An Unconnected Heap of Duties?', p. 445.
[7] Ross, *The Right and the Good*, p. 19.

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McNaughton considers two possible ways of interpreting Ross's remark about what it means for certain types of duty to 'come before' others, each of which he ultimately rejects as problematic. One way of understanding this claim is to take Ross to be offering two distinct conditions that must be met in order for one to be justified in breaking a promise one has made. First, the good to be produced by violating the promise must be very great. Second, the promise must be fairly trivial in comparison to other promises. The problem with this interpretation, according to McNaughton, is that, since it implies that it is never morally permissible to break a very serious promise, regardless of the amount of good that would be produced by breaking it, it seems unlikely that Ross would have held such a view.[8]

Alternatively, we might suppose that a promise's being 'comparatively trivial' is a matter of its relation, not to other promises, but to the good that would be produced by breaking the promise. In this case, what we should do, McNaughton suggests, is to think of Ross as asking us to imagine 'separate rankings of instances of both duties in order, from the least to the most weighty instances'.[9] Once this is done, the only instances in which it would be morally permissible to violate a promise are those in which the duty of beneficence that would be violated by keeping the promise is significantly higher on its scale than the duty of fidelity is on its scale. The problem with this sort of picture, McNaughton argues, is that there appears to be no way to make sense of these cross-scale comparisons. In order to know how high a particular duty is on its scale, one must know the upper and lower limits of the scale. But because there is seemingly no limit to the amount of good that can be produced by a single course of action, there will be no upper limit to the scale of beneficence. If, then, there is no way to gauge how high a particular duty of beneficence is on its scale, it will be impossible to know whether it is higher on its scale than a given duty of fidelity is on its scale. Thus, the whole project seems rather hopeless, if not outright incoherent.[10]

What should we think about this? To begin, I am not entirely convinced that the project of cross-scale comparisons is as hopeless as McNaughton makes it out to be. For one thing, it is not obvious that in order to know even roughly how high up the scale a particular duty of beneficence is we must first know its upper and lower limits. We must have some sense as to which duties are toward the bottom of the scale and which duties are toward the top, to be sure, but just how clearly these limits must be defined is uncertain. After all,

[8] McNaughton, 'An Unconnected Heap of Duties?', p. 445.
[9] McNaughton, 'An Unconnected Heap of Duties?', p. 445.
[10] McNaughton, 'An Unconnected Heap of Duties?', p. 445.

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we seem to be able to make judgments of this sort where plenty of other properties are concerned. Take weight, for instance. Just as there is no apparent limit to how much good can be produced by a single action, there seems to be no limit to how heavy a single object can be. Nevertheless, it seems fairly unproblematic to suppose that things like buildings and mountains are fairly high on the weight scale, whereas pebbles and paper clips are fairly low. The reason we are able to make such judgments, it seems, is that the set of objects to which a given object is compared when considering how high it is on the weight scale consists of those objects with which we have become familiar through experience. Undoubtedly, there are any number of possible objects we have never even considered that would rank significantly higher on the weight scale than things like buildings and mountains, but 'higher than' is a comparative relation, and we compare the things we know.

The same, it seems, can be said of beneficence. It may well be that there is no clear limit to the amount of good that can be produced by a single course of action, but when we say that a particular action is fairly high on the beneficence scale we are comparing it with the other sorts of action with which we are familiar. As a result, we feel reasonably confident in saying that actions like saving innocent lives and curing serious diseases are fairly high on the beneficence scale, whereas feeding the pigeons and giving up one's place in line at the grocery store are fairly low. Moreover, the fact that we do not know exactly how high (or low) the scale goes does not seem to preclude us from making judgments of this sort.

At any rate, even if McNaughton is correct in claiming that there is no way to make sense of the kind of cross-scale comparisons he describes, it may well be that this is not the sort of comparison Ross has in mind. In what follows, I offer an alternative way of understanding Ross's remarks about the comparative stringency of prima facie duties, which, in addition to being compatible with his overall view as presented in the text, provides us with a coherent, and indeed plausible, account of what it means for some duties to be more binding than others.

III

As we have seen, Ross claims that in order for a duty of beneficence to come before a duty of fidelity (which he takes to be the more stringent of the two) there are two conditions that must be met: the amount of good produced by the benevolent act must be very great, and the promise must be comparatively trivial. Here I want to suggest that it is the second condition – that the promise be comparatively trivial – which is fundamental. Satisfying this requirement is both necessary and sufficient to justify breaking a promise in cases of this sort (cases in which the only conflicting duty is a duty of beneficence). I also want

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to suggest, however, that whether a promise is comparatively trivial is a matter neither of how high an act of benevolence is on its scale in relation to how high an act of promise-keeping is on its scale, nor of the solemnity of a given promise in comparison to other promises. Instead, it is simply a matter of whether the good to be produced by the act in question is sufficient to make the keeping of one's promise trivial by comparison. Here, the only relevant comparison to be made is one between a particular promise and a particular benevolent act, and the promise is comparatively trivial only if one would not be justified in failing to perform the benevolent act solely in order to keep the promise.[11] Admittedly, this does not provide a great deal of precision in specifying when a promise is comparatively trivial,[12] but perhaps, following Aristotle, it will be enough if we can 'sketch the truth roughly and in outline' and trust that 'our discussion will be adequate if its degree of clarity fits the subject-matter'.[13]

One obvious advantage of understanding Ross in this way is that there is little difficulty in seeing how the relevant comparisons are to be made; we do it all the time. We are very well aware that my stopping to pull children out of burning cars on the highway – particularly when I am uniquely in a position to do so – justifies breaking my promise to pick you up on time at the airport, but my stopping to collect litter on the side of the road does not. The good produced by the former, though not the latter, makes keeping my promise trivial by comparison. And if, after becoming fully aware of the details of the situation, you were to remain upset at me for breaking my promise, you would be rightly regarded as unreasonable (and perhaps even morally flawed in some way).

But what of Ross's claim that the good to be produced by the benevolent act must be very great? Is this not an additional requirement which must be met if one is to be justified in breaking a promise? I suggest that it is not. Although Ross pretty plainly takes this to be a necessary condition, it is not in addition to the promise's being comparatively trivial. Rather, it is just that a promise will be trivial in comparison to some good only if that good is very great. (One could think of a good's being very great as a necessary condition for a promise's being comparatively trivial, which is itself both necessary and sufficient for being justified in breaking a promise.) The reason

[11] Alternatively, one could perhaps think of a promise as being comparatively trivial in comparison to the good that would be brought about by some benevolent act when it is such that the person to whom the promise was made, insofar as she is reasonable, would condone (if not encourage) breaking the promise in order to bring about that good.

[12] This, too, is in keeping with Ross's view of such matters. 'For the estimation of the comparative stringency of these *prima facie* obligations', he says, 'no general rules can, so far as I can see, be laid down' (Ross, *The Right and the Good*, p. 41).

[13] Aristotle, *Nicomachean Ethics*, trans. Terence Irwin (Indianapolis, 1985), 1094b13–14, pp. 20–1.

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for this, it seems, is that all promises, even the most trivial of them, are fairly morally significant and are to be regarded seriously. And though some promises are certainly more trivial than other promises, no promises are trivial. The same is not true, however, of all the various goods that can be produced by benevolent acts; some of them are quite trivial indeed. Since, then, even the most trivial of promises are much more morally significant than the most trivial goods, in order for the production of some good to justify breaking a promise, it will have to be very great (as compared with other goods).

Here it may be helpful to consider an example. What we need first is an instance of a relatively trivial promise. Perhaps one of the more trivial (or less solemn) promises one can make is a promise to arrive somewhere on time. Next, let us consider a rather trivial benevolent act, say, giving up one's place in line at the grocery store. It seems that one will not be justified in breaking a promise even as trivial as one to arrive somewhere on time in order to perform a trivial benevolent act like giving up one's place in line at the grocery store. It also seems that there are a number of much more significant benevolent acts, such as helping one's neighbor paint his house or collecting money for cancer research, that would not justify breaking even a trivial promise either. Insofar as this is correct, it begins to look as though being justified in breaking even a trivial promise for the sake of performing some benevolent act is going to require that the good to be produced is rather significant (in order to make the promise trivial by comparison). And when the promise in question is no longer a trivial promise but a more solemn one, the good to be produced by the benevolent act must be all the greater.

When Ross says that in order for a duty of beneficence to come before a duty of promise-keeping, the good to be produced must be very great, it seems reasonable to suppose that he is simply highlighting this fact. Given what is required for duties of beneficence to override duties of fidelity *in particular cases*, most of the time when there is a conflict between duties of beneficence and duties of fidelity, the duties of fidelity will win out – and likewise for the other duties Ross takes to be particularly binding (e.g. duties of non-maleficence and duties of reparation). What we end up with, then, is an account that is able to avoid the complete generalism of absolutism while at the same time acknowledging and allowing for the special force that certain duties seem to possess.[14]

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[14] I am grateful to David McNaughton for many helpful discussions.

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