

### Abstract

This paper defends the *Limited Use View* of our duties to save. The Limited Use View holds that the duty to save is a duty to treat oneself, and perhaps one's resources, as a means for preventing harm to others. But the duty to treat oneself as a means for the sake of others is limited. One need not treat oneself as a means when doing so is either very costly, or conflicts with one's more stringent duties to others. This provides an agent-neutral account of the duty to save. When the cost of saving passes a certain threshold, one is permitted to fail to save, and it is impermissible for others to force one to save, if doing so will force one to incur an equal or greater cost. I argue that the Limited Use View is to be preferred to agent-relative accounts of the duty to save, which hold that the limit on our duty to save is grounded in an agent-relative prerogative to weight our own interests (and those of special others) more heavily than other people's interests.

Keywords: duties to save; minimising harm; agent-relative prerogatives; resources; permissible harming

### 'The Limited Use View of the Duty to Save'

#### 1. Introduction

This paper defends the *Limited Use View* of the duty to save. The Limited Use View holds that the duty to save is a duty to treat oneself, and perhaps one's resources, as a means of preventing harm to others. But the duty to treat oneself as a means for the sake of others is limited; one need not treat oneself as a means when doing so is either very costly, or conflicts with one's more stringent duties to others. By the same token, one's claim to be saved is limited. One has no claim that others treat themselves as means for one's sake when doing so is either very costly for them, or conflicts with their more stringent duties to others.

In Section Two, I develop the Limited Use View of our duties to save. In Section Three, I consider the saving of special others. In Section Four, I explore the moral significance of the distinction between failing to save and depriving others of the means of saving themselves. I consider the implications of this distinction for the Limited Use View.

I then turn to a possible rival to the Limited Use View, which holds that our duties to rescue are limited by an agent-relative prerogative to weight our own interests, and the interest of special others, more heavily than the interests of others (Quong, 2009: 516; Fabre, 2012: 22). I argue, in Section Five, that this view faces a dilemma. To explain the limit on the duty to rescue, it must permit agents to grant very great weight to their own interests. And yet a permission to grant their own interests such weight leaves agents free to fail to prevent very serious harm when saving will cause them to incur even very moderate costs.

Several writers argue that since we have agent-relative prerogatives to fail to save, we must also have agent-relative prerogatives to do harm (Quong, 2009, 2016; Davis, 1984; Bazargan-Forward, in progress; Fabre, 2012: 61). According to these writers, the extra weight that we may attach to our own interests permits us to inflict ordinarily disproportionate harm on others to avoid harm to ourselves. Call this the *Broad Scope View* of agent-relative prerogatives. Along similar lines, Seth Lazar argues that we can have agent-relative duties to cause ordinarily disproportionate harm, since we are sometimes obliged to assign extra weight to the interests of certain special others.

I grant the conditional claim of the Broad Scope View. If agent-relative prerogatives bear on our duties to rescue, then they should also bear on our duties not to harm. Given this, the converse should also hold: if prerogatives do not bear on our duties not to harm, then we have reason to doubt that they bear on our duties to rescue. In Section Six, I reject several arguments that purport to show that agent-relative prerogatives, or associative duties, permit us to inflict ordinarily disproportionate harm for our own sake, or for the sake of special others. Section Seven argues that cases in which one may harm another person rather than harm oneself in order to save a third party also fail to vindicate the Broad Scope View. The Limited Use View can explain these cases without resorting to agent-relative prerogatives. Section Eight concludes.

## 2. *The Limited Use View*

Non-consequentialist moral theories typically hold that we have duties to rescue others from harm, but that these duties are limited. The limit is grounded in the cost to the prospective rescuer (and, of course, in the cost that the rescue might impose on others). According to these theories, one may ordinarily let a harm befall someone else in order to avoid not only a greater or equal harm to oneself, but also to avoid a somewhat lesser harm to oneself.<sup>2</sup> Consider *Self-Help Sharks*:

*Self-Help Sharks*: Aziz is being chased by Small Shark, who will bite off one of Aziz's legs if she catches him. Ben is being chased by Big Shark, who will bite off both of Ben's legs if she catches him. Aziz can either climb aboard a nearby boat, saving himself, or help Ben climb aboard, saving Ben.

It seems plausible that Aziz may save himself – that is, Aziz may deliberately fail to prevent a greater harm to Ben in order to prevent a smaller harm to himself (call this *preferential saving*).

And yet many non-consequentialists also subscribe to the view that, ordinarily, we ought, to minimize harm when rescuing.<sup>3</sup> Consider *Rescue Sharks*:

*Rescue Sharks*: Aziz is being chased by Small Shark, who will bite off one of Aziz's legs if she catches him. Ben is being chased by Big Shark, who will bite off both of Ben's legs if she catches him. At no cost to herself, Rescuer (who is a stranger to Aziz and Ben) can help either Aziz or Ben onto her boat, but she cannot save both.

Let's assume that since she can prevent serious harm at no cost to herself, Rescuer is under a duty to rescue in *Rescue Sharks*.<sup>4</sup> Plausibly, she cannot discharge this duty by saving Aziz, since Ben will suffer a greater harm. One cannot satisfy the duty to rescue simply by preventing some harm to someone, even if one thereby prevents a serious harm that would ordinarily give rise to a duty to rescue.<sup>5</sup> After all, the duty to rescue *just is* a duty to prevent harm. It's hard to see how one might satisfy this duty by deliberately preventing less harm when preventing more harm is no costlier. Rescuer is thus under a duty to rescue Ben, and Ben has a corresponding claim that Rescuer save him, since he will otherwise suffer the greater harm. Saving Aziz thus conflicts with Rescuer's duty to save Ben, and Aziz therefore has no claim to make use of Rescuer for his own sake.<sup>6</sup>

If Aziz and Ben face threats of equal harm, Rescuer ought to toss a coin to decide who to save, thereby giving each a fair chance of rescue. Even if both are strangers to Rescuer, we have enough evidence about people's biases – implicit or otherwise – to want her to engage in a fair decision-making procedure if she can.

I suggest that the permissibility of Aziz's failing to preventing a greater harm befalling Ben, despite the impermissibility of Rescuer's doing so, is explained by the fact that we each have only limited claims that others makes themselves (and their legitimate resources) available for our sake. This limit is grounded in respect for persons, which involves recognizing that individuals are not means to be used for the general good. It is widely accepted that treating others as a means, especially in ways that impose costs on them, is very hard to justify. It is this that explains the impermissibility of lethally pushing a person in front of a trolley to save five, despite the intuitive permissibility of diverting a trolley away from five to where it will kill one as a side-effect (Foot, 1967; Thomson, 1985). But to demand that a person rescue is to demand that she treat herself as a means for the benefit of others: for example, that Rescuer devote herself to pulling Ben out of the water. Our claims that others treat themselves as means in this

way is limited by both the costs that the prospective rescuer would thereby incur, and by the rescuer's more stringent duties. For example, if Rescuer can reach Ben only by lethally mowing down a third person, Cathy, with her boat, her duty not to cause harm to Cathy defeats Ben's claim to be saved.

The fact that each of us has only a limited claim that others treat themselves as a means for our sake explains, in turn, why each of us has only limited duties to rescue. When making herself available for rescue passes a certain degree of cost to a prospective rescuer, the imperiled person typically lacks a claim that the prospective rescuer save her.

The claim that our duties to rescue are cost-sensitive in this way, such that victims simply lack claims to be rescued when saving them is very or disproportionately costly, is widely endorsed (Firth and Quong, 2012: 695; Quong, 2015: 252; Oberman, 2015: 258). However, what usually gets overlooked is that the cost matters specifically because the rescuer will be treating herself as a means for the victim's sake – that is, what matters is not merely the fact that one will bear a cost, but also how that cost will be incurred.<sup>7</sup> We typically have no claim that others make themselves useful for our sake when doing so will impose significant or disparate costs on them. Rescuer need not save Ben from the loss of his legs at the cost of her own leg, nor save Ben from a broken wrist at the cost of breaking her own leg.

Of course, one might be required to rescue even at very significant cost if the alternative is allowing a very grave harm. Perhaps one must jump in front of a trolley to prevent a hundred or a thousand deaths. But the fact that requiring a person to make very costly use of herself for the sake of others is justified only when the stakes are so high reflects the significance that we attach to harmful using compared to, say, harming as a foreseen side-effect.

We might think that, contrary to what I suggested in Section One, agent-relative prerogatives explain why one must bear only a limited cost in the course of making oneself useful to others. Rather than rivalling the agent-relative view, perhaps the proposed limit arises

precisely because one may attach greater weight to one's own interests than to the interests of others. But the Limited Use View does not rely on augmenting one's interests. Rather, it proposes an agent-neutral limit on our duty to rescue agent-relative. It holds not only that one is not obliged to make *oneself* useful to others past a certain cost, but also that *others* may not make one so useful past that cost.<sup>8</sup> As I discuss in Section Six, this does not entail that one may not be forced to bear an equivalent cost as a side-effect of a harm-preventing action. But it does rule out forcing other people to serve as a means when the cost of their doing so is sufficiently high that they need not treat themselves as a means. Correlatively, on this view, there is no difference between the point at which one is obliged to jump in front of a trolley, and the point at which one would be obliged to push someone else in front of a trolley. If one must prevent the harm, and one can either jump oneself or push someone else, one ought to toss a coin.

### *3. Special others*

We might think that, by rejecting the idea of agent-relative prerogatives, the Limited Use View cannot accommodate the widely-held intuition that one may sometimes preferentially save not only oneself, but also certain 'special others'. Consider *Parental Shark*:

*Parental Shark*: Aziz is being chased by Small Shark, who will bite off one of Aziz's legs if she catches him. Ben is being chased by Big Shark, who will bite off both of Ben's legs if he catches him. Mother, Aziz's parent, but a stranger to Ben, can save either Aziz or Ben at no physical cost to herself, but she cannot save both.

It seems permissible for Mother to preferentially save Aziz, even though saving Ben would be no physically costlier for her. We would also likely grant that one may preferentially save if the person facing the lesser harm is one's spouse, parent, sibling, or close friend. The proponent

of agent-relative prerogatives has a ready explanation of these intuitive permissions. Our prerogatives permit us to weight not only our own interests, but also the interests of special others, more heavily (Scheffler, 1982: 21; Hurka, 2005: 59; Quong, forthcoming).<sup>9</sup>

It is tempting, since each of these permissions pertains to a special other, to suppose that the permissions share the same ground. But there is reason to doubt this. Some permissions to preferentially save special others are plausibly grounded in the cost to the rescuer of failing to save, just like the permission to preferentially save ourselves. If Aziz is Rescuer's close friend, for example, we can imagine that failing to save him would be very costly for Rescuer. But, like the permission to preferentially save ourselves, this permission is not grounded in an agent-relative prerogative to augment the interests of special others. Rather, it is grounded in the impersonal fact of how costly minimizing harm would be for the rescuer.

Whilst this cost explains Rescuer's permission to preferentially save Aziz if Aziz is her friend, it does not plausibly ground a duty for her to do so. After all, one can opt to bear very high costs for the sake of others – Rescuer could simply decide to bear the cost of seeing Aziz suffer, and perhaps the resultant damage to their friendship, in order to prevent the greater harm to Ben. Saving Ben is thus permissible but not required.

In contrast, Mother is plausibly required preferentially save Aziz rather than Ben. This duty cannot be grounded in the cost to Mother of failing to save Aziz. Permissions grounded in costs to oneself can be waived, and Mother cannot waive her duty to save Aziz. Nor would an indifferent parent be required to minimize harm rather than save their own child, on the grounds that failing to save their own child is not costly to them. Parents plausibly owe it to their children to preferentially save them even if they do not care about them. A duty to preferentially save one's child must be grounded in some other fact arising from the relationship between parents and children. For example, Rivka Weinberg argues that parental obligations are grounded in parents' responsibility for exposing their child to the risks of life

(Weinberg, 2015).<sup>10</sup> In general, responsibility for someone's being imperiled can alter one's duties to rescue. If Rescuer has shoved Aziz, but not Ben, into the water, Rescuer will have caused the loss of Aziz's leg if she does not save him. Rescuer's more stringent duty not to cause harm to Aziz defeats Ben's claim to be saved from even a somewhat greater harm. If something like Weinberg's account is correct, parents' responsibility for imposing risks of harm upon their child can similarly explain why Mother has a more stringent duty to save Aziz, if Aziz is her child, than she does to save Ben.<sup>11</sup>

Such duties are agent-relative in the sense that only those who are appropriately connected to Aziz's being imperilled are obliged to preferentially save him, since only those people are under a more stringent duty that defeats Ben's claim to be saved. But this is simply an instance of the general principle that one can, through one's actions or role, incur particular obligations. It does not require weighing one's own interests, or those of special others, more heavily than other people's, which is the form of agent-relativity that the Limited Use View rejects. Nor do these duties obtain only in the context of special relationships. If Rescuer has shoved Aziz in the lake, she ought to preferentially save him even if they are strangers.

I leave it open here precisely when we have duties, rather than permissions, to preferentially save.<sup>12</sup> Where there are such duties, these limit the claims that others have to make use of us, as per the Limited Use View. Ben lacks a claim that Mother make herself useful to him when Mother has a duty to save Aziz, just as Ben lacks a claim that Rescuer make herself useful to him if she can reach him only by mowing down Cathy.

#### *4. Depriving others of harm-preventing resources*

Consider *Equal Canoe*:

*Equal Canoe*: Aziz is being chased by a shark who will bite off one of his



legs. Ben is being chased by a shark who will bite off one of his legs. There is an abandoned one-person canoe nearby. Whoever reaches the canoe first will avoid his shark and suffer no harm. The other person will be bitten by his shark.

We might assume that if Aziz is permitted to save himself in *Self-Help Sharks*, where he climbs aboard the nearby boat rather than assisting Ben, then he must also be so permitted in *Equal Canoe*. After all, if Aziz may save himself from a lesser harm rather than Ben from a greater harm, he may surely save himself from a harm equal to that facing Ben rather than save Ben, as in *Equal Canoe*.

But I think this assumption is mistaken. *Self-Help Sharks* is a case of failing to save. By climbing aboard the boat, rather than assisting Ben, Aziz does not make Ben any worse off than Ben would have been in Aziz's absence. Aziz merely denies Ben the opportunity to benefit from his presence. Another way of putting this is that in *Self-Help Sharks*, Ben's being saved depends on Aziz's making himself useful to Ben. But Ben lacks a claim that Aziz make himself useful for his sake when this will be very costly for Aziz. Thus, if Aziz refuses to save Ben in *Self-Help Sharks*, Aziz does not thereby deprive Ben of a resource to which Ben has a claim.

But in *Equal Canoe*, whoever uses the canoe thereby deprives the other of a resource that he could have used to save himself, without needing anyone else to make themselves useful. This is more than failing to save the other person: if he takes the canoe, Aziz thereby prevents Ben from saving himself, and vice versa.

Aziz and Ben plausibly have equal claims to make use of the canoe. Since only one can make use of the canoe, their claims here amount to a claim to an equal chance of using the canoe. It seems plausible that, just as Rescuer ought to toss a coin to determine whom to rescue when Aziz and Ben face equal threats, Aziz and Ben should, ideally, toss a coin to see who may

use the canoe. We should not simply grant that whoever reaches it first (and, perhaps, can fend off the other victim) is entitled to use the canoe. As Victor Tadros argues, we should avoid permitting the morally irrelevant fact of someone's greater physical prowess to determine who gets to use harming-preventing resources (Tadros, 2011: 208). The fact that Aziz is stronger than Ben, and can reach the canoe more quickly and then fight Ben off, does not give Aziz a permission to take the canoe.

Now consider *Unequal Canoe*:

*Unequal Canoe*: Aziz is being chased by Small Shark, who will bite off one of his legs. Ben is being chased by Big Shark, who will bite off both his legs. There is an abandoned one-person canoe nearby. Whoever reaches the canoe first will avoid his shark and suffer no harm. The other person will be bitten by his shark.

The relationship between Aziz and Ben is the same as in *Equal Canoe*. Neither needs the other to make himself usefully available in order to avoid harm but, in taking the canoe, each will deprive the other of a resource that they could have used to save themselves. And yet in this case Ben will suffer a greater harm than Aziz. I argued in *Rescue Sharks* case that facing the greater harm gives Ben a claim to be saved by Rescuer. We might think that changing the means of rescue from Rescuer to a canoe cannot effect any change in Ben's claims. If Ben has a claim to be saved by Rescuer in virtue of facing the greater harm, he also has a claim to save himself using the canoe.

But this is too quick. It matters that in *Rescue Sharks*, Aziz and Ben can avoid harm only via another agent, Rescuer. Since Rescuer ought to minimize harm, she has a duty to save Ben. Aziz has no claim that Rescuer make herself useful to him when doing so conflicts with her duty to prevent a greater harm by saving Ben. But in *Unequal Canoe*, Aziz's avoiding harm

does not depend on another agent, on whose assistance he has no claim. He needs only to make use of himself and the canoe. In this respect, *Unequal Canoe* is akin to *Self-Help Sharks*, in which Aziz may climb aboard the boat rather than assisting Ben, even though Ben will suffer a greater harm.

Since in *Self-Help Sharks* Aziz does not, by saving himself, deprive Ben of a resource to which Ben has an equal claim, Aziz need not even toss a coin before saving himself. He may simply climb aboard the boat. But taking the canoe in *Unequal Canoe* does deprive Ben of a resource to which Ben also has a claim. Thus, whilst Aziz need not simply cede the canoe to Ben, he may not simply take it either. Rather, as in *Equal Canoe*, Aziz and Ben should toss a coin to see who gets to use the canoe. Ben's facing the greater harm does not entitle him to simply take the canoe. By depriving Aziz of a fair chance to use this harm-preventing resource, Ben would wrongly force Aziz to bear a cost for his sake that Aziz is not required to bear rather than save himself.<sup>13</sup>

What should we say about *Speedy Shark*?

*Speedy Shark*: Aziz and Ben are being chased by a shark. The shark will bite only the first person it reaches; the other will make it to shore. Aziz is tall, and so the shark will bite off only one of his legs. Ben is short, and so the shark, who is hungry, will bite off both his legs. Aziz is a faster swimmer than Ben. He can keep ahead of Ben, making it safely to shore.

It seems permissible for Aziz to swim faster than Ben. But, again, this isn't a straightforward case of failing to save: rather, Aziz requires that Ben be bitten in order to avoid being bitten himself. *Shark* thus involves Aziz's making harmful use of Ben, rather than merely failing to rescue him.

If Aziz outswims Ben, he does not require that Ben treat himself as a means. But he nonetheless forces Ben to become a means from which Aziz benefits.

However, this instance of harmful using is plausibly justified in light of the fact that Aziz and Ben are symmetrically situated with respect to harmfully using each other – that is, Aziz can escape only if Ben is bitten, and vice versa. When there is no way to avoid someone’s being harmfully used, such using lacks its typical moral significance. Allowing the faster swimmer to simply take the canoe in *Equal Canoe* or *Unequal Canoe* is objectionable because it allows that swimmer to unfairly obtain a resource (the canoe) to which each threatened person has an equal claim. But in *Speedy Shark*, Aziz is not using his own resources (his swimming ability) to deprive Ben of a resource to which Ben has an equal claim. The only resource of which either will deprive the other in *Speedy Shark* is his own body. Given the cost involved, neither has a duty to make his body usefully available to the other. Thus, Aziz need not toss a coin to see whether he may swim faster than Ben.

To be clear: my claim is not that, provided that one is not making use of a person, or that someone’s being harmfully used is unavoidable, one is permitted to cause harm in order to save oneself. It is, for example, plausibly impermissible for Aziz to defend his life against an attacker, Villain, if his defensive action will kill innocent Ben as a side-effect.<sup>14</sup> It is also impermissible for Aziz to try to impede Ben’s attempt to outswim the shark, for example by throwing bits of driftwood at Ben. Both harming and failing to save are subject to proportionality constraints, and the proportionality constraint on harming is more stringent than that on failing to save, given the moral worseness of doing harm compared to allowing harm. One must be securing considerably more good than one inflicts in order to justify harming a non-labile person, even when one does not make use of that person. The exception in *Speedy Shark* arises only because useful harming is both reciprocal and unavoidable.

### *5. Failing to save as an agent-relative prerogative*

That we have only limited duties to treat ourselves as a means for the sake of others does the explanatory work that some accounts of the duty to rescue assign to an agent-relative prerogative. This prerogative supposedly allows each of us to weight our own interests, and the interests of special others, more heavily than the interests of strangers (Quong, 2009: 516 - 517; Quong, 2016: 817; Bazargan-Forward, 2018: 672-673; Fabre, 2012: 21, 57; Hurka, 2005: 59; Scheffler, 1982: 20).<sup>15</sup> According to Jonathan Quong, this additional weight is “the only explanation” of why, for example, one may fail to save a child’s life at the cost of becoming a paraplegic, even though the death of the child is the worse outcome, impartially considered. (Quong, 2009: 517). Each person has, “a powerful agent-relative permission to avoid sacrificing or significantly risking their own life for the sake of others” (Quong, 2009: 516-517).<sup>16</sup> Seth Lazar advances a similar view about associative duties, arguing that we are morally required to confer additional weight on the interests of those to whom we stand in special relationships (Lazar, 2013: 21). In this and the following sections, I raise two objections to the agent-relative view of the limits on the duty to rescue. The first concerns the scope of the duty to rescue. The second concerns the scope of agent-relative prerogatives.

#### *5.1 Augmenting interests, and the scope of the duty to rescue*

The agent-relative approach gets the intuitively right result in a range of cases. It allows, for example, that Aziz may save his one leg rather than both Ben’s legs. But it nonetheless struggles to reconcile two plausible, widely-held views about the scope of the duty to rescue. The first is that Aziz may fail to save not only Ben’s legs, but also Ben’s life – indeed, several people’s lives – in order to avoid the loss of his own leg. The second is that Aziz may not fail to save Ben’s legs to avoid, say, the breaking of his own arm.

With respect to the first claim, imagine that Aziz can stop a runaway trolley from hitting ten people only by placing his leg on the tracks, where it will be amputated by the trolley. We do not typically demand that people save at such great cost to themselves even when many lives are at stake. But to explain this on the agent-relative view, we must grant that Aziz may treat the loss of his one leg as bad as, or perhaps worse than, say, the death of ten people. In other words, securing this plausible claim requires that Aziz may attribute very significantly more weight to his own interests.

Some (artificial) numbers help to illustrate the point. Say that, impartially considered, the loss of a leg has a disvalue of 10, and that death has a disvalue of 20. If Aziz may fail to save the ten, this means that he may fail to prevent a harm with a total disvalue of 200, in order to avoid a harm of 10 to himself. This means that harms to Aziz count for twenty times as much as harms to other people. And then consider that, plausibly, Aziz would not be required suffer the loss of his leg to save even more than ten lives. Imagine that the trolley will hit twenty people unless Aziz places his leg on the tracks. I still doubt that he must place his leg on the tracks. If so, and if this is to be explained by his agent-relative prerogative, the extent to which Aziz may augment his interests must be greater still: harms to Aziz must count for at least forty times as much as harms to other people.

Now consider what this means for the second plausible claim. Imagine that Aziz can prevent the loss of Ben's two legs at the cost of breaking his own arm. He is, *prima facie*, under a duty to save Ben at this cost. But if Aziz may attribute harms to himself the degree of extra weight suggested above, it doesn't look as if Aziz can be under a duty to save after all. Say that a broken arm has a disvalue of 3, and the loss of two legs has a disvalue of 15. Given the augmenting of Aziz's interests (they count for at least forty times other people's interests), his broken arm will turn out to be a great deal worse, from Aziz's perspective, than the loss of both Ben's legs. Hence, Aziz may refrain from saving Ben.

The dilemma, then, is that augmented interests can justify a plausible limit on the duty to save only if agents may augment their own interests by a considerable degree, such that the loss of one leg turns out to be worse than ten or twenty deaths. But if agents may augment their interests by such a degree, they may do so for any cost they will incur in a rescue. And this renders the duty to rescue implausibly undemanding. Even comparatively moderate costs, so inflated, will outweigh serious harms to others. This problem generalizes to other ways of augmenting agents' interests, such as allowing one to give one's interests some additional fixed weight. The fixed weight must be very significant in order to explain the limit on the duty to rescue, but such significant weight cannot ground a plausibly robust duty to rescue.

The underlying problem is that the concept of augmenting interests is at odds with the structure of the duty to rescue, which depends only partly on comparing the harms at stake. A prima facie duty to rescue obtains when one could prevent a non-trivial harm to someone else.<sup>17</sup> Whether one is in fact under duty then depends on a comparison of the harm facing the victim with the cost of rescuing her. But this is true only insofar as the cost of rescuing falls below a certain threshold – that is, below the cost that we can be expected to bear in the course of making ourselves useful to others. Once that threshold is reached, further harms to others do not weigh against the cost to the rescuer. The threshold itself is not generated by a comparison of the harms at stake. This is why Aziz is not required to rescue ten or twenty people at the cost of his leg: not because he may augment his own interests until they outweigh the other harms at stake, but rather because the threshold is insensitive to the other harms at stake. If the loss of his leg exceeds the limit Aziz must bear for the sake of saving others, further harms are typically irrelevant. On the augmenting view, in contrast, there is no cost threshold as such. Rather, the cost one can be required to bear is always settled by a comparison with the harm one can prevent – it's just that one's own interests are inflated to limit the duty's demandingness.

I say that harms beyond the threshold are *typically* irrelevant in order to leave room for a ‘catastrophe clause’, where one can have a duty to rescue (or force others to rescue) at very high cost in order to avoid a moral disaster (Nozick, 1971: 30(fn.)). As Saba Bazargan-Forward puts it, “we do not place infinite importance on our status as inviolable beings. We are willing to accept a regime that permits sacrificing an individual when doing so is necessary to avert a catastrophic harm because we do not think that any single person’s status is so important as to warrant protection under those circumstances.” (Bazargan-Forward, 2018: 690) As I suggested above, one might be required to jump in front of a trolley to save a thousand people. But there is nonetheless considerable space between the limit on our ordinary duties to rescue, and the point at which a harm is sufficiently catastrophic to compel us to rescue beyond that limit. Within this space, our permission to refrain from saving is justified not by comparisons with the harms at stake, but rather by the fact that saving breaches the cost threshold.

Contrast this with the agent-relative view, which must hold that one may fail to prevent the harms that fall into this space only if they are outweighed by the rescuer’s augmented interests (recall Quong’s insistence that this is augmenting the only possible explanation of why one may fail to prevent more serious harms to others to avoid a lesser cost to oneself). If this space includes harm up to the level of a genuine moral catastrophe, this view is deeply implausible, for the reasons just given. Moreover, as I argued above, the limit on our duty to rescue is not agent-relative. If Aziz is not required to make himself useful to Ben at a certain cost, others are not permitted to make him so useful either.

The more plausible account of our duties to rescue, then, seems to be that one may sometimes refrain from saving *even though* refraining does not produce the better outcome – considered either impersonally, or from one’s own perspective.<sup>18</sup> It’s true that some failures to save might *also* produce the better outcome, impartially considered. If Aziz can save Ben from a broken finger only by suffering a broken arm, failing to save is the better outcome. But this is



not what explains the permission to refrain from saving. That is explained by the fact that Ben has no claim that Aziz makes himself useful to him at such cost, in order that Ben may avoid a smaller cost.

Denying that agents may augment harms to themselves is compatible with the claim that harms can be morally weighted for the purposes of proportionality calculations. We might, for example, believe that harms to a culpable or responsible attacker count for less than harms to her innocent victim, or to a bystander. But this moral weighting reflects the idea that, for example, the attacker's moral responsibility for an unjust threat decreases the moral significance of harms to her. It is much less plausible that such weighting can take place with respect to harms to non-labile people, such that harms to oneself or special others count for more in proportionality calculations, simply in virtue of being harms to oneself or a special other, compared to harms to other innocent people.

#### *6. The scope of agent-relative prerogatives*

According to the Limited Use View, the fact that one lacks a claim to be saved by an agent does not imply that one might also lack a claim not to be harmed by that agent. Consider *Defensive Shark*:

*Defensive Shark*: Aziz is being chased by Small Shark, who will bite off one of Aziz's legs if she catches him. Ben is on a nearby raft. Aziz can use a grenade to kill Small Shark, but the blast will also blow off both of Ben's legs.

The costs facing each party are the same as in *Self-Help Sharks*. In *Self-Help Sharks*, the cost that Aziz would bear in making himself useful to Ben defeats Ben's claim to be saved by Aziz. But if we require Aziz to refrain from throwing the grenade because doing so will harm Ben,

we do not thereby require Aziz to make himself (or his resources) useful to Ben. Given this, the cost that will befall Aziz if he refrains from harming Ben lacks the purchase it has in rescue cases. Note that this is true even if we somewhat increase the cost to Aziz to reflect the moral significance of doing, rather than allowing, harm. Aziz may not throw the grenade even if he will otherwise lose both his legs, and the grenade will cause the loss of only one of Ben's legs.

Of course, one may sometimes harm others, both for one's own sake and for the sake of others. Such harming can be justified as the lesser evil. But lesser-evil justifications obtain only when harming secures substantially more good than the harm inflicted. As above, it is plausibly permissible to kill one as a side-effect of saving five lives, but not fewer than five. Importantly, lesser-evil justifications override, rather than defeat, agents' claims not to be harmed, and these claims continue to make demands upon us. For example, a person who is justifiably harmed on lesser-evil grounds is entitled to compensation. In contrast, we need not compensate people whom we justifiably fail to save.

The historically orthodox view of prerogatives supports this asymmetry, holding that while prerogatives bear on the permissibility of failing to save, they do not bear on the permissibility of harming (Scheffler, 2002; McMahan, 1997; Pogge, 2010). But it is doubtful that a prerogative-based view can support this distinction. If an agent-relative prerogative is a permission to weight some people's interests more heavily than others, it's unclear why that permission would be limited to failing to save other people, and not extend to harming other people (Kagan, 1989; Kagan, 1984: 251). After all, one cares more in general about one's own interests, and those of one's nearest and dearest; one does not have a special concern that applies only in cases in which one has a prima facie duty to aid others.

Of course, the moral worseness of causing, rather than allowing, harm makes it harder to justify harming an innocent person in order to avoid harm to oneself compared to failing to save an innocent person in order to avoid harm to oneself. But this should generate only a

difference in degree regarding how much harm one may impose for one's own sake, compared to how much harm one may allow for one's own sake. It does not support the view that prerogatives are relevant to failing to aid, but irrelevant to harming. If one's interests count for more, this should be reflected in the degree of harm one may inflict on both liable and non-liable people for one's own sake, compared to that which one may inflict for the sake of strangers.

This observation was first presented as an objection to the idea that agents have a prerogative to weight their own interests more heavily. But some proponents of prerogatives have instead embraced this Broad Scope View, arguing that prerogatives do indeed justify both failing to save and harming (Quong, 2009, 2016; Davis, 1984; Hurka, 2005: 61; Bazargan-Forward, in progress; Fabre, 2012: 61). For example, Jonathan Quong argues that our agent-relative prerogatives can permit us to cause harm in the absence of either a lesser-evil or liability-based justification for doing so, providing an independent justification for harming even innocent people (Quong, 2016). Lazar, in contrast, argues that our associative duties alter lesser-evil calculations, since harms to special others count for more than harms to others (Lazar, 2013: 18).

I think it's true that if agent-relative prerogatives underpin our permissions to fail to save, then they must also bear on our permissions to do harm. Thus, by showing that prerogatives do not plausibly bear on our permissions to do harm, we thereby undermine the view that they bear on our permissions to fail to save. In what follows, I reject three arguments for the view that prerogatives can justify harming.

### *6.1 Prerogatives as independent justifications for harming*

Quong has recently proposed two arguments in defense of the Broad Scope View (Quong, 2016). The first defends the claim that one has an agent-relative permission to kill innocent threateners

who will make use of one's body. The second defends the claim that one has an agent-relative permission to kill innocent threateners who will not make use of one's body.

The first argument draws on Judith Jarvis Thomson's well-known case, *Violinist*.

*Violinist*: A famous musician, Violinist, is dying from a kidney ailment. Victim alone has a particular blood type that can cure him, if Violinist is connected to her body in a way that enables him to use her circulatory system for nine months. The Society of Music Lovers kidnap Victim and Violinist while they are both unconscious, and connect his body to hers. (Thomson, 1971: 49)

Quong argues that it is permissible for Victim to unplug herself from Violinist, knowing that this will cause Violinist's death. And yet, Violinist, being unconscious, is not responsible for being connected to Victim, and therefore not liable to be killed. There is also no lesser-evil justification for killing Violinist, since, impersonally considered, Violinist's death is a worse harm than the harm facing Victim. The only possible explanation of the permissibility of Victim's unplugging herself is that she has an agent-relative prerogative to do so. Hence, agent-relative prerogatives can justify harming. Violinist has a right not to be killed by Victim, but this right is permissibly infringed by Victim.

An upshot of this argument is that whilst Victim may unplug herself, other people may not unplug her even if she is explicitly refusing her consent to being used by Violinist in this way.<sup>19</sup> From an agent-neutral perspective, Quong argues, nothing could justify bringing about Violinist's death to "save another from nine months in a hospital bed." (Quong, 2016: 823)

Quong observes, though, that this argument might generate defensive rights of only fairly limited scope. Violinist is a particular type of innocent threatener - namely, one who must make use of Victim's body to survive. Since being made use of is morally significant, we might think

that this at least partly explains why Victim may kill Violinist. And yet Quong thinks that our prerogatives are broader in scope than this. We may also kill people who do not need to make use of us, as in *Defensive Trolley*:

*Defensive Trolley*: A runaway trolley is heading to where it will kill five people. Frank, a bystander, diverts the trolley to where Erica is trapped. Erica can prevent herself from being killed by the trolley by throwing a grenade that destroys the trolley and kills Frank as a side-effect.

Quong argues that Erica may kill Frank. If Frank is permitted to kill Erica in the course of saving the five, “how can it be impermissible for Erica to change the result so that it is Frank, rather than her, who dies so long as the five will be saved either way?” (Quong, 2016: 826). Yet, he says, Frank is not liable to be killed – because he acts with objective justification – and Erica has no lesser-evil justification for killing him. Only an agent-relative prerogative can explain the permissibility of Erica’s throwing the grenade that will kill Frank.

### *6.1.2 Duties and using*

I think that Quong is correct about the permissibility of disconnecting in *Violinist*, but wrong about what explains that permissibility. I think he is incorrect about the permissibility of killing Frank in *Trolley*.

It’s true that, as things stand in *Violinist*, if Victim does nothing, Violinist will be saved. In a standard rescue case, it is only if the rescuer acts that the victim is saved. But this difference does not mean that Victim is not saving Violinist: clearly, she *is* saving him, for as long as she allows him to make use of her body. The relevant question is whether Violinist has a claim to be saved by Victim at the cost to Victim of having someone make use of her body for nine months.

And it seems uncontroversial that Violinist has no such claim, because this is why it is uncontroversial that the members of the Society of Music Lovers act wrongly in forcibly connecting Victim to Violinist in the first place.<sup>20</sup>

We can also see that Violinist lacks a claim to be connected to Victim by thinking about versions of the case in which Violinist is not unconscious throughout. If he is conscious when he is kidnapped, he ought not to agree to the plan – indeed, he ought to do his best to thwart it. Victim is under no duty to save Violinist at the cost of nine month’s use of her body, and thus Violinist should try to prevent Victim’s being forced to save him. Note that Violinist should do this even foreseeing the lethal cost to himself. I may fail to save someone to avoid a lethal cost to myself; I may not force someone else to save me to avoid a lethal cost to myself when doing so imposes on her a cost that she is not required to bear.

If Violinist wakes up after he has been connected to Victim, he has a duty to disconnect himself if Victim asks him to do so, or if Victim is unconscious and cannot give or refuse consent. Violinist cannot simply presume consent: at best, we allow hypothetical consent with respect to actions that are intended to benefit the person whose consent is presumed.<sup>21</sup> If Violinist cannot disconnect himself, he must ask someone else to do it. And Quong agrees with this: for him, Violinist’s being unconscious is essential precisely because, if he were awake, he ought to disconnect himself. *Intentionally* remaining connected to Victim would be a violation of her right not to be used, rendering Violinist liable to defensive harm (Quong, 2016: 822).

But if one lacks a right to use a person’s body intentionally, one cannot acquire such a right by using it unconsciously. If Victim has a right that a conscious Violinist disconnect himself, or have himself disconnected by others, she may disconnect him or have him disconnected by others irrespective of whether he is conscious. Note that none of this requires us to take a stance on the relationship between agency and violating rights, nor the relationship between violating rights and liability. It requires only the very plausible thought that Violinist lacks a right to make

use of Victim's body – which, as above, explains why the members of the Society of Music Lovers act wrongly in connecting Violinist to Victim. If Violinist had such a right, the Society would not act wrongly in connecting them. Given the extent of the wrongful usage – nine continuous months – it is plausibly proportionate to lethally prevent the use of Victim's body by Violinist. The fact that the wrongful actions of others mean that Victim must now stop Violinist from using her, rather than merely fail to save him, cannot make it impermissible for Victim to disconnect herself.<sup>22</sup> If she has no duty to connect herself to Violinist, Victim has no duty to remain connected to him when she is forcibly and wrongly connected by others.

Quong's view that it would be impermissible for a third party to disconnect Victim, even if she is conscious and explicitly refusing consent to be used, is also implausible. His claim that third parties are choosing whether to kill one person, or save another from nine months in a hospital bed, obscures the morally salient features of the case (Quong, 2016: 823). On that description, *Violinist* is akin to a case in which a doctor must decide whether to remove a life support machine from a patient whose life it will save in order to give it to a patient for whom it will avoid the need for nine months' bed rest. It thus fails to capture what is at stake in *Violinist*, where a doctor is deciding whether one patient should be allowed, for nine months, to make non-consensual use of another patient's body to benefit himself. Patients are not pieces of equipment that doctors may distribute to where they will do the most good, or leave where others have distributed them in the hope of doing the most good. Once we recognise that this costly use of Victim is what is stake in *Violinist*, it is deeply counter-intuitive that a doctor may not prevent the non-consensual use of Victim by Violinist.

To see this even more plainly, imagine that being connected to Violinist will wear out Victim's kidneys, so that at the end of the nine months Violinist will be restored to health and Victim will die. But, Violinist is unconscious, so his killing of Victim is unintentional (call this case *Lethal Violinist*). If Quong is correct that there is no morally relevant difference between

Victim and Violinist, it seems that the doctor must let Violinist kill Victim, rather than disconnect him. After all, in terms of the outcome, it's no better that Victim live than Violinist. And given the moral significance of the distinction between doing and allowing, Quong's view implies that the doctor ought to allow Violinist to kill Victim, rather than kill Violinist to save Victim.

But that cannot be right. To be sure, both Violinist and Victim are innocent, in that neither is morally responsible for an unjust threat to the other. But it surely matters, from an agent-neutral perspective, that Violinist is lethally and non-consensually making use of Victim's body. Anyone may and should prevent the wrongful, non-consensual use of Victim's body (and we know it *is* wrongful, since we know that the Society act wrongly in connecting her, and Violinist would act wrongly in failing to disconnect himself). The fact that Quong's agent-relative account cannot accommodate a permission for a doctor to disconnect Victim should make us deeply suspicious of the claim that agent-relativity explains Victim's permission to disconnect herself. We do not need to invoke agent-relative prerogatives to explain Victim's permission to disconnect, and such prerogatives cannot explain the very plausible view that others have duties to disconnect her.

### *6.1.3 Defense against non-using threateners*

Quong argues that agent-relative prerogatives also support a permission to kill non-liable people who will not otherwise make use of one's body, such as Frank in *Defensive Trolley*. Quong suggests that there is no reason for the cost of saving the five to fall on Erica rather than Frank. Erica may therefore switch the trolley towards Frank even though there is no lesser-evil justification for doing so, and Frank is not liable to be killed. Notice that nothing in Quong's argument limits Erica's prerogative to killing Frank: rather, it licences Erica's killing any bystander as a consequence of saving her own life. Neither Frank nor a bystander violate Erica's right not to be killed; neither Frank nor a bystander is liable to be killed to save Erica.<sup>23</sup>



Quong suggests that Frank and Erica are on a moral par (Quong, 2016: 827). But this seems false. Granted, both are morally innocent. But, as we saw in *Lethal Violinist*, this does not entail across-the-board moral parity. It is permissible to lethally disconnect Violinist to save Victim even though Violinist is morally innocent with respect to the threat he poses. Given this, merely pointing to the equal innocence of Frank and Erica will not show them to be on a moral par. Not all innocent people have equal rights to kill. Frank poses an objectively justified threat that he is under no duty not to pose.<sup>24</sup> By using force against him, then, Erica is not forcing Frank to comply with a duty that he has not to harm her. She is simply killing one person to avoid letting herself die, even though the person who will otherwise kill her is objectively permitted to kill her.

If, as I have argued, Victim's permission to disconnect in *Violinist* does not rest on agent-relative prerogatives, Quong cannot rely on *Violinist* to support the relevance of prerogatives in *Defensive Trolley*. And he cannot point to the limits on our duty to rescue to support a permission to kill Frank. Erica is not being forced to make herself useful to either the five or Frank. As I argued in Section 2, it matters *how* a cost is incurred. Costs to a prospective rescuer undermine the right not to be saved because we have only limited duties to make ourselves useful to others. The mere fact that Erica will bear a lethal cost if she does not kill Frank does not undermine Frank's right not to be harmed when Frank has no need to make use of Erica. Frank's right not to be harmed could be overridden by a lesser-evil justification, if Erica would otherwise bear a much greater cost than she would impose on Frank. But since killing Frank is not the lesser evil, it is impermissible for Erica to kill Frank.

### *6.2 Agent-relative duties and lesser-evil justifications for harming*

Seth Lazar argues that associative duties bear on the permissibility of harming because, "our deep personal relationships can affect how much harm can be inflicted as the lesser evil".

(Lazar, 2013:18) Lesser-evil justifications are not straightforward consequentialist justifications: although they are sensitive to outcomes, they are also sensitive to deontological considerations (Frowe, 2018; Rodin, 2011). For example, as I suggested in Section Two, one is plausibly justified in collaterally killing one for the sake of saving five, but unjustified in usefully killing one for the sake of saving five.

Lesser-evil justifications are usually thought to weigh goods and harms impartially, providing objective justifications for harming on which anyone may act (McMahan, 2015: 9; McMahan, 2014: 109; Frowe, 2018). Lazar rejects this view, arguing that an agent's duty to treat harms to special others as especially weighty can generate lesser-evil justifications for harming that are indexed to the agent, permitting (indeed, requiring) her to inflict what would ordinarily be disproportionate harm.

Lazar defends this view by way of the following three cases:

*Meteor:* A single meteor is heading towards the earth. If Alice does nothing, it will kill five innocent people. Alice can use a missile launcher to divert the meteor away from the five towards another innocent person, Clare.

Lazar claims that in *Meteor* Alice ought to save the five rather than refrain from killing Clare. This tells us that saving the five is at least as important as not killing Clare. Now consider,

*Two Meteors:* Two meteors are heading towards the earth. One is heading towards five innocent people. One is heading towards Alice's daughter, Bethany. Alice can divert only one meteor, which will then land harmlessly in a field. The other meteor will kill whoever is in its path.

Lazar claims that in *Two Meteors* Alice ought to save Bethany rather than save the five. This tells us that saving Bethany is at least as important as saving the five. But of course, this importance must be explained by the fact that Bethany is Alice's daughter – a stranger, with no agent-relative interests at stake, would not be even permitted to save Bethany instead of five other people, let alone required to do so.

Finally, consider *Diversion*:

*Diversion*: A single meteor is heading towards Alice's daughter, Bethany. Alice can divert the meteor to where it will kill Clare (Lazar, 2013: 19-20).

Lazar claims that in *Diversion* Alice ought to lethally divert the meteor away from Bethany and towards Clare. After all, we've seen that saving Bethany is, from Alice's perspective, at least as important as saving the five. And Alice is required to kill Clare as a side-effect of saving the five. Alice must therefore be required to kill Clare as a side-effect of saving Bethany. Hence, agent-relative duties can justify killing.

Lazar recognizes that most non-consequentialist accounts of agent-relative interests hold that such interests cannot justify harming. But he argues that such accounts are overly sensitive to the distinction between doing and allowing, and insufficiently sensitive to different types of harming. He suggests that while agent-relative interests cannot justify intentional, opportunistic harming, they can justify foreseeable, eliminative harming. He argues that Alice's killing of Clare in *Diversion* is an instance of foreseeable eliminative harming.<sup>25</sup>

Lazar says that his contention is merely that agent-relative duties bear on the degree of harm that one may inflict as the lesser evil (Lazar, 2013:18) But his argument needs more than this: it goes through only if the amount of harm that Alice may *fail to prevent* is also determined by what is the lesser evil. Only then could the fact that Alice ought to fail to save the five in order

to save Bethany in *Two Meteors* show that her agent-relative duties bear on lesser-evil justifications. And this is the crucial move: once we grant that agent-relative duties bear on lesser-evil justifications, and we agree that lesser-evil justifications can justify harming, we have strong support for Lazar's conclusion that one may harm on the basis of agent-relative duties.

But, as we saw in Section 5, the scope of our duties to rescue cannot be plausibly explained by lesser-evil considerations. We are not justified in failing to save only if doing produces the better outcome. Aziz may refrain from placing his leg on the trolley tracks even though ten or twenty deaths is clearly the worse outcome, compared to the loss of one leg. Similarly, Alice ought to fail to save the five, in order to save her daughter, even though five deaths is clearly the worse outcome compared to one death. And the rights of the five are defeated, not overridden, in this case. The five (or their beneficiaries) are not owed compensation for Alice's failure to save them, as they would ordinarily be if their rights were infringed on lesser-evil grounds. If lesser-evil considerations do not explain why Alice ought to fail to save the five in *Two Meteors*, we have no reason to grant Lazar's view that agent-relative duties bear on lesser-evil justifications. And thus we have no support for the crucial move that agent-relative duties justify harming.

Thinking of claims to be saved as limited claims to make use of others, as I have proposed, gives us a different analysis of Alice's permissions in the Meteor cases. Alice ought to kill Clare as a side-effect of saving the five in *Meteor* because she has a lesser-evil justification for doing so, grounded in the fact that the death of five people is substantially worse than the death of one person, impartially considered.<sup>26</sup> Clare's right is overridden, not defeated. Her beneficiaries are plausibly owed compensation. And Alice ought to fail to save the five in *Two Meteors* because it is a case of failing to aid, in which the five need Alice to treat herself as a means for their sake if they are to survive. The five have no claim that Alice treat herself as a means when doing so is either very costly for her, or conflicts with her more stringent duties,

including her duty to save her child. Since their claims are defeated, the five (or their beneficiaries) have no claim to be compensated in light of Alice's justified failure to save them.

But Clare in *Diversion* does not need Alice to make herself useful for Clare's sake, if Clare is to survive. She merely needs Alice to refrain from killing her. Of course, Lazar believes that our duty to save our child is more stringent than our duty not to kill a stranger. But in the absence of transitivity from Alice's permission to fail to save to a permission to inflict harm, we have no argument for the view that the duty to save one's child is more stringent than the duty not to kill. And it is doubtful that Clare's claim not to be killed is defeated by Alice's duty to save her child, as the claims of the five to be saved are defeated in *Two Meteors*. As above, Clare's beneficiaries are owed compensation in *Meteor*, where Clare is killed to save five. Given this, her beneficiaries are surely owed compensation in *Diversion*, where Clare is killed to save one. If so, Clare's claim not to be killed is not defeated by Alice's duty to save her child in the way that a claim to be saved can be so defeated.

I argued, in Section 2, that we can have agent-relative duties to preferentially save, and that these duties can be explained by, for example, an agent's being responsible for a victim's being in danger. If, for example, Rescuer has shoved Aziz into the shark-infested waters, she will have caused the loss of Aziz's leg if she does not save him. Given this, it is permissible for Rescuer to save Aziz's one leg at the cost of failing to prevent the loss of Ben's two legs. But this does not entail that Rescuer may cause the loss of Ben's two legs in the course of saving Aziz. Nor would she be permitted to cause an equivalent harm to Ben – the loss of one leg – in the course of saving Aziz's leg. Aziz's claim not to be harmed is no more stringent than Ben's claim not to be harmed. Similarly, even if we grant that parents should save their children at the cost of allowing greater harm to others, this does not entail that parents may cause harm to others to prevent a lesser or equal harm to their child. Rather, they may cause only harm that is justified as the lesser evil, impersonally considered.

### 7. *Choosing between deaths*

Before closing, it is worth addressing a challenge that proponents of the Broad Scope View might level against the Limited Use View. Consider *Busy Trolley*:

*Busy Trolley*: A runaway trolley is lethally heading towards five people. Bystander can lethally divert the trolley towards herself, or towards innocent Workman, who is trapped on a side-track.

Most people believe that Bystander need not divert the trolley towards herself, but that it is permissible for her to divert it towards Workman.<sup>27</sup> If this is correct, it looks as if agent-relative prerogatives might justify harming after all. This would explain why Bystander may kill Workman rather than kill herself.

But the Limited Use View can also explain the permissibility of Bystander's killing Workman. In order to be saved, the five need Bystander to make use of herself for their sake: they need her to divert the trolley. Since making use of herself in this way will impose a lethal cost on Bystander, she may refrain from using herself for the sake of the five.<sup>28</sup> They have no claim to be saved when doing so imposes this cost on the prospective rescuer. But, as we noted in *Defensive Trolley* in the previous section, diverting towards Workman does not involve making use of Workman, nor forcing Workman to make use of himself. Thus, even though the five have no claim to make use of Workman if doing so will force him to bear a lethal cost, they do have a claim that Bystander save them by diverting towards Workman, since Bystander does not thereby use Workman as a means of saving the five. The five are being rescued by Bystander, not by Workman.

It's morally significant, then, that Bystander's options are either harming Workman or making harmful use of herself. Contrast *Busy Trolley* with *Busy Trolley Two*:

*Busy Trolley Two*: A runaway trolley is lethally heading towards Victim. She can divert the trolley down a side-track to where it will kill five innocent people, divert it down a different side-track to where it will kill Engineer, or let herself be killed by the trolley.

Victim has a choice between letting herself die, and killing either Engineer or the five. Killing the five to save herself is clearly impermissible. But so too is killing Engineer. Such a killing cannot be justified as a side-effect of saving the five, since the five are not presently threatened. And Victim is not saving either the five or Engineer by refraining from diverting towards them. This is not a case of imposing a harm that is justified on lesser-evil grounds, but rather a case in which one must either kill a non-liable person or persons, or let oneself die. Since there is no lesser-evil justification that can overcome Engineer's right not to be killed, Victim must refrain from diverting the trolley.

Similar reasoning applies in *Busy Trolley Three*:

*Busy Trolley Three*: A runaway trolley is lethally heading towards five people. Victim can divert it away from the five down a sidetrack, on which Victim herself is standing. The sidetrack has a branch, down which Victim can again divert the trolley before it hits her. Controller is standing on this branch. Whoever is hit by the trolley will be killed.<sup>29</sup>

One might think that since Victim is permitted to divert the trolley away from the five towards Workman in *Busy Trolley*, she may divert away from the five and then divert again towards Controller in *Busy Trolley Three*. But this would be a mistake. In *Busy Trolley Three*, killing

Controller cannot be justified as a side-effect of saving the five: they are saved when the trolley is first diverted. If Victim subsequently diverts down the branch towards Controller, she is saving only herself, which is disproportionate and hence impermissible. In *Busy Trolley Three*, then, Victim may refrain from saving the five, since they have no claim that Victim make lethal use of herself for their sake, and she can permissibly save them only in a way that involves making lethal use of herself. But if she chooses to save the five, she may not then divert the trolley towards Controller. Killing Controller is not the lesser evil and, as a killing, cannot be justified on the grounds that Controller has only a limited claim that Victim make herself useful for his sake.

### *8. Conclusion*

The Limited Use View conceives of our duties to rescue as limited duties to treat ourselves as a means for the sake of others. We have no duty to treat ourselves as a means when doing so is unreasonably costly for us, or conflicts with our other, more stringent duties to others.

Correlatively, we each have only limited claims to be rescued.

That we have only limited duties to make ourselves useful for the sake of others is an upshot of the claim that individuals are not means to be used for securing the greater good.

Allowing individuals the space to pursue their autonomously-chosen projects requires that we limit the claims that others can make on individuals. Within this space, one need not minimize harm.

The Limited Use View offers a largely agent-neutral account of our duties to save. If an agent is not required to make use of herself for the sake of preventing harm to others, it is impermissible for others to make use of her to that same end, if doing so will impose at least as much cost upon her. The cost to a rescuer of failing to save certain special others gives us a similarly agent-neutral explanation of other permissions to preferentially save. The Limited Use View also grants that there can be agent-relative duties to preferentially save. But such duties



are not explained by a prerogative to augment the interests of either the rescuer or the victim. It is this type of agent-relativity that the Limited Use View rejects.

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<sup>1</sup> Drafts of this paper were presented at the Oxford Studies Workshop in Political Philosophy, Syracuse University; the Stockholm Centre for the Ethics of War and Peace's Philosophy, Ethics and Killing (PEAK) workshop; the Moral and Political Philosophy seminar at Helsinki University; the Philosophy Department Colloquium at the University of Reading; the Philosophy Department Colloquium at Stellenbosch University. I am very grateful to participants at each of these events. Special thanks to Rosa Terlazzo, who served as my respondent at Syracuse, and to the editors and referees for OSPP. This research was funded by a Knut and Alice Wallenberg Fellowship (grant number 1521101).

<sup>2</sup> I assume throughout that all the prospective victims and rescuers are innocent in the relevant sense - that is, nobody is culpable, morally responsible or negligent with respect to what threatens the prospective victims. Things might be different, of course, if the rescuer wrongly endangered the victim. I also assume that there are no prior agreements that could render preferential saving permissible. For discussion of such agreements, see (Frowe, 2019).

<sup>3</sup> Of course, consequentialists believe this too.

<sup>4</sup> The discussion in this section draws on (Frowe, 2019)

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<sup>5</sup> There might be some mild harms that I need not prevent even if I can easily do so – that is, that don't trigger duties to rescue at all.

<sup>6</sup> There are, of course, alternative views of what Rescuer ought to do, such as use a weighted lottery, perhaps giving Ben a two-out-of-three chance of being rescued. These arguments are more popularly deployed in cases in which differently-sized groups face harms of similar magnitude, since it is in these cases that, as Taurek notes, the loss is no better or worse for any particular person (Taurek, 1977: 307). I lack space to explore these alternatives here. My interest is the largely uncontroversial view that Rescuer may not simply save Aziz, even though Aziz may simply save himself. Those who prefer alternative accounts of Rescuer's duties should be able to substitute, *mutatis mutandis*, their preferred view for my claims about minimising harm.

<sup>7</sup> For example, Jonathan Quong points to the fact that our claims to be rescued are limited by the cost to the rescuer to support the view that our claims not to be harmed obtain only when one can 'reasonably demand' that others fulfil them (Quong, 2016: 253). Yet, as I argue below, this does not follow, since refraining from harming someone does not involve making oneself useful to her.

<sup>8</sup> Thanks to an anonymous referee for pushing me to elucidate this difference.

<sup>9</sup> Precisely why we may favor special others in this way is contested. But it is generally agreed by proponents of agent-relative prerogatives that one may augment the interests of at least some special others.

<sup>10</sup> Weinberg argues that these duties persist throughout a child's life. I remain neutral on this issue here. Even if one does not have a duty to preferentially save one's adult children, the cost of failing to do so would usually ground a permission to do so.

<sup>11</sup> The causal view of parental obligations might support a similar explanation of a duty to preferentially save. See e.g. (Lindemann Nelson, 1991)

<sup>12</sup> We might think that we have duties to preferentially save our spouses, for example, insofar as we make a commitment to prefer them above others. On the conditions for valid agreements to preferentially save, see (Frowe, 2019).

<sup>13</sup> I consider the moral significance of ownership of resources in Frowe, 'Preferential Defence' (unpublished ms.). I do not address that question here.

<sup>14</sup> My view is thus different from Jonathan Quong's, which holds that one may defensively harm innocent bystanders (or obstructors) unless one's defence requires making use of them (or their resources). That is, Quong limits defensive permissions by asking whether the defender is treating anyone else, or their resources, as a means to her own protection. Quong thus permits Aziz to divert a trolley away from himself towards Ben, since Aziz does

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not thereby make use of Ben. My view asks instead whether others are making use of the defender. My view prohibits Aziz's diverting, since refraining from killing Ben does not require Aziz to make himself useful to Ben.

<sup>15</sup> There is disagreement about how special relationships have to be to generate agent-relative prerogatives. I take no stance on that debate here.

<sup>16</sup> See also (Davis, 1984); (Bazargan-Forward, unpublished ms.); Fabre, 2012: 61)

<sup>17</sup> As in note 5, we plausibly lack duties to prevent trivial harms to other. But one can deny this whilst still accepting the broader picture that I paint here.

<sup>18</sup> As above, there may be some amount of harm that Aziz is required to prevent even at the cost of losing his leg.

<sup>19</sup> Quong briefly considers the idea that, at best, special others, e.g. Victim's spouse, may be permitted to unplug Victim, but does not offer a full defense of that claim. Since I don't think the permission to unplug is agent-relative, I need not engage with that claim here. But for rebuttal of the suggestion that one can transfer one's agent-relative prerogatives, see (Frowe, 2019).

<sup>20</sup> As Quong grants on p. 823

<sup>21</sup> Or, perhaps, to benefit someone with whom she has a special relationship, but is under no duty to rescue. For example, we might think that it is permissible to use an unconscious person's rare blood type to save her brother's life, even if she has no duty to save him, if we reasonably believe she would consent if she could.

<sup>22</sup> The Limited Use View thus secures defensive permissions against at least non-labile threateners who will otherwise make costly use of one's body, since defense in such cases is justified by the limits on our duties to rescue. It does not follow from this that one has defensive permissions against non-labile threateners *only* when they will otherwise make use of one's body. Although I reject (in the next section, and elsewhere) Quong's view that one may defend oneself against objectively justified threateners, I remain neutral here on the question of defense against non-labile, objectively unjustified threateners (such as a toddler with a gun, or person in the grip of a schizophrenic episode).

<sup>23</sup> Quong's view particularly struggles to accommodate cases in which one has a lesser-evil justification for harming. Such justifications obtain only when refraining from harming is too costly to be demanded: it is permissible for Frank to kill Erica because the alternative (five deaths) is unreasonably costly. On Quong's view, this should entail that Erica lacks a right not to be killed, since Quong argues that our both our right to be saved and our right not to be harmed depend on whether it is reasonable to demand that others fulfil those rights. It's not reasonable to demand that Frank refrain from killing Erica. And yet, Quong argues that Erica not only retains her right not to be killed, but may also kill Frank in self-defense. For more on this, see (Frowe, 2015).

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<sup>24</sup> I argue elsewhere that Frank is required to turn the trolley. If so, the idea that he could be an appropriate target of force in virtue of doing what morality requires looks even more implausible. See (Frowe, 2018).

<sup>25</sup> Lazar's understanding of eliminative harming is at odds with other accounts in the literature, most of which describe killing Clare as a foreseen side-effect, rather than an eliminative, killing. This need not detain us here.

<sup>26</sup> I defend the view that acting on lesser-evil justifications for harming is required in (Frowe, 2018).

<sup>27</sup> The case is in Thomson (Thomson, 2008: 364), but she attributes the idea to Alexander Friedman. Thomson argues that since it would be supererogatory for Bystander to divert towards herself, she may not divert towards Workman. But few people seem persuaded by this. See, for example, (FitzPatrick, 2009); (Walen and Wasserman, (2012); Tadros, 2011: 120)

<sup>28</sup> Tadros suggests this in (Tadros, 2011: 120).

<sup>29</sup> Thanks to Krister Bykvist for this case.