

# SUPEREROGATORY SPANDRELS

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## ABSTRACT

Standing in San Marco Cathedral in Venice, you immediately notice the exquisitely decorated spandrels: the triangular spaces bounded on either side by adjoining arches and by the dome above. You would be forgiven for seeing them as the starting point from which to understand the surrounding architecture. To do so would, however, be a mistake. It is a similar mistaken inference that evolutionary biologists have been accused of making in assuming a special adaptive purpose for such biological features as fingerprints and chins. I argue that a mistake of just this sort is being made by ethicists who appeal to the intrinsic value of supererogatory acts in their efforts to make space for supererogation in ethical theory. Many cases of supererogatory action are simply spandrels: by-products of uncontroversial commitments elsewhere in our moral thought. This is not to downplay their value but rather to show that their value need not be the justification for making room for the supererogatory. I demonstrate this by examining two areas: rights and the distribution of burdens among a group. My argument has significance for those who take themselves to be defends of the possibility of supererogatory actions, as well as those who are committed to the contrary and those who believe themselves to be indifferent on the matter.

## KEYWORDS

Spandrels, forbearance, paradox of supererogation, rights, supererogation, volunteering

## 1. INTRODUCTION

### *1.1. From Architecture, to Biology, to Ethics*

Standing in San Marco Cathedral in Venice, you immediately notice the exquisitely decorated spandrels: the triangular spaces bounded on either side by adjoining arches and by the dome above. The spectacular ceiling designs are so perfectly fitted to the tapering spaces of the spandrels that you might, understandably, be tempted to see those spandrels as the starting place from

which to understand the surrounding architecture. This would, of course, be a mistake. The spandrels are simply architectural by-products of having the dome of San Marco mounted on arches. Given the arches, the spaces must exist, and since they exist, they are often decorated in extraordinary aesthetic style. To argue that the spaces exist *because* of the ceiling designs is to invert the correct explanation. It would be to suppose, as Dr Pangloss does, that “everything is made for the best purpose. Our noses were made to carry spectacles, so we have spectacles. Legs were clearly intended for breeches, and we wear them.”<sup>1</sup>

Those evolutionary biologists who were part of the so-called ‘Adaptationist Programme’ have been accused by Stephen Jay Gould and Richard Charles Lewontin of making the same mistake: of seeking to explain the origins of all biological features in terms of their use and value, thereby overlooking the *architectural constraints* placed on evolutionary mechanisms. The mistake is Panglossian: the biologists supposed that the causal and historical origins of a biological feature could be read off from its current utility.<sup>2</sup> In so doing, they ignored the possibility that some biological features, such as fingerprints<sup>3</sup> or the divaricate pattern of molluscs<sup>4</sup>, could be ‘evolutionary spandrels’: structural by-products of other features or mechanisms. The human chin is another example. Humans bear greater resemblance to young apes than to adult apes. The exception to this ‘neotenic’ progression is the chin, which is larger in humans than in both infant and adult apes. It is tempting therefore to see the human chin as having a specific evolutionary function and several, ultimately unsuccessful, attempts were made to give such an explanation. However, as Lewontin states “Finally it was realised that in an evolutionary sense the chin does not exist!”<sup>5</sup> The chin is, in fact, a spandrel: it appears simply as a by-product of the relative regression rates of two growth fields in the lower jaw (the dentary and alveolar), both of which show neoteny. Of course, like the spandrels of San Marco, many of these biological features are now considered to be independently valuable; but that does not mean that they were directly selected for.

<sup>1</sup> Quoted in Gould and Lewontin, “The Spandrels of San Marco and the Panglossian Paradigm: A Critique of the Adaptationist Programme,” 583, from Voltaire’s *Candide*.

<sup>2</sup> Gould, “The Exaptive Excellence of Spandrels as a Term and Prototype,” 10750.

<sup>3</sup> Gould and Lewontin, “The Spandrels of San Marco and the Panglossian Paradigm: A Critique of the Adaptationist Programme,” 596–7.

<sup>4</sup> *Ibid.*, 595. Gould also gives the examples of the “masculinized genitalia in female hyenas, exaptive use of an umbilicus as a brooding chamber by snails, the shoulder hump of the giant Irish deer, and several key features of human mentality” (“The Exaptive Excellence of Spandrels as a Term and Prototype,” 10750).

<sup>5</sup> Lewontin, “Adaptation,” 217. See also Gould, *Ontology and Phylogeny*, 381–382.

Just as this architectural metaphor has been important for evolutionary biologists, I argue in this paper it is also instructive for ethicists, as a mistake of just this nature is being made in debates surrounding supererogatory actions. Supererogatory actions are ones that go beyond the call of duty: they are neither morally required nor morally forbidden while being better than the least we could permissibly have done. We undoubtedly place value on the performance of such actions. It is therefore tempting to see this value as justifying the limits placed on what we consider to be our duty, limits that are necessary in order for room to be made for the possibility of supererogatory action. However, like the ceiling designs of San Marco and our chins, another explanation can be given. I argue that the space that supererogatory actions occupy in our ethical theories should be seen as a moral spandrel: a necessary by-product of commitments in other areas of ethical thought.

Thus, the argument I give in this paper is a methodological one. It addresses the *way* in which the very possibility of supererogatory action is defended. As I will show, one of the main arguments defended in the literature is an argument that the value of the optionality of the supererogatory justifies limiting duty in order to make room for supererogatory actions. My strategy is different: I argue that instead we should look at commitments many already make in their ethical theories and see how the possibility of supererogatory actions arise as a by-product of these commitments.<sup>6</sup>

Thus, my argument is of significance for three groups. Primarily, it is important for those who want to offer a defence of the supererogatory, by pointing them towards a different strategy, one that does not rely on a prior commitment to the special value of the supererogatory and recognises that the reasons that we have to place limits on duty may well be heterogeneous. Importantly, identifying these supererogatory acts as spandrels does nothing to diminish their value or importance; rather I demonstrate that this value need not be appealed to in order to establish the possibility of such acts. Secondly, it is important for those who take themselves to be opposed to this class of moral actions, as I demonstrate that there is much more at stake in rejecting the supererogatory than previously thought. Finally, my argument has implications for those who take themselves not to be committed on the

<sup>6</sup> Some others have suggested that space for the supererogatory can be derived from other aspects of our moral schemata. However, these have mainly focused on thin ethical concepts, such as reflecting on the notion of 'requirement' (Chisholm, "The Ethics of Requirement."), intrinsic preferability relations (Chisholm and Sosa, "Intrinsic Preferability and the Problem of Supererogation."), or integrated conceptual frameworks for our deontic and aretaic notions (McNamara, "Making Room for Going Beyond the Call"; Mellema, *Beyond the Call of Duty*). My approach differs from these by examining specific thick ethical commitments to certain types of actions (such as rights and distribution of burdens), bringing them together as heterogeneous paths to the same end: the defence of supererogation.

question of the existence of supererogatory acts because I demonstrate that anyone who makes the commitments I discuss already makes room for the possibility of the supererogatory.

I begin by defining the core of the concept of supererogation that I will be employing. I then discuss an argument for the supererogatory that is predominant in the literature and which relies on an appeal to the intrinsic value of supererogatory. I then give two examples of where supererogatory actions arise as spandrels from other ethical commitments that many already make: rights and the distribution of burdens among members of a group. Commitments in these areas that I discuss make room for two important categories of supererogatory action: supererogatory forbearances and volunteering, respectively. I conclude by outlining the advantages of considering supererogatory actions as spandrels, which include avoiding some of the worries that defenders of supererogation have had about approaches that do not appeal to the intrinsic value of the supererogatory.

### *1.2. Supererogation and Its Paradox*

Supererogatory actions have been defined in many ways. However, at the heart of every account are the following two core features: (1) that supererogatory actions are neither morally required nor morally forbidden, and are thus morally *optional*; and (2) that supererogatory actions are morally good.<sup>7</sup> These two features are in tension with many moral theories, giving rise to what is often called the ‘paradox of supererogation.’ This paradox is, roughly, if an action is morally good—indeed often morally *best*—why are we not required to perform them?<sup>8</sup>

<sup>7</sup> Or, more specifically, they are morally *better* than some other act that could permissibly have been performed instead. The notion of ‘goodness’ that is relevant for defining supererogatory action is difficult and controversial to cash out. I agree with McNamara that a supererogatory action must be better than the least we could permissibly have done (for more on this see McNamara, “Supererogation, inside and out: Toward an Adequate Scheme for Common-Sense Morality.”). The examples I propose in this paper are compatible with this ‘better than the least’ characterisation, as well as with more complex understandings of the goodness of supererogatory acts.

<sup>8</sup> For further discussion of this issue, see Raz, “Permissions and Supererogation”; Horgan and Timmons, “Untying a Knot from the Inside Out: Reflections on the ‘Paradox’ of Supererogation”; Heyd, *Supererogation: Its Status in Ethical Theory*; Kagan, “Does Consequentialism Demand Too Much? Recent Work on the Limits of Obligation”; Nagel, “The Limits of Objectivity.”

Note that there are other features that people have thought necessary for an action to be supererogatory, such as: praiseworthiness (for example, Urmson, “Saints and Heroes”; Raz, “Permissions and Supererogation.”); meritorious motivation (for example, Horgan and Timmons, “Untying a Knot from the Inside Out: Reflections on the ‘Paradox’ of Supererogation”; Feinberg, “Supererogation and Rules.”); altruistic or valuable intent (for

One response to the paradox of supererogation question is simply to accept that if an action really is good then we are required to perform it and to reject the possibility of supererogatory action. However, this response is only tempting on the presupposition of a deontic scheme whereby all actions are either morally required, morally forbidden or morally indifferent. Following McNamara, I call this position the Strong Threefold Classification.<sup>9</sup>

The Strong Threefold Classification is perhaps a familiar one. Simple (maximising) act consequentialism entails it because that theory entails that all morally significant actions (that is all actions that are not morally indifferent) are either morally required (if they maximise the good) or morally forbidden (if they do not maximise the good). It is true that on some accounts of consequentialism room more than one action could be tied for ‘morally best’. These actions would then be optional in the sense that we are neither morally required to perform nor forbidden from performing any particular act. However, this still does not allow some optional actions to be better than others, which is required for supererogatory actions to be possible. It is precisely because none are better than any of the others that they are tied. Thus, there can be no supererogatory actions on such a view.<sup>10</sup>

What would it take to reject the Strong Threefold Classification? Michael Clark claims that any adequate theory of supererogatory action needs to answer two questions: the first is “what gives a man the moral right to refrain from” performing what is morally good; and the second is “why it is

example, Heyd, *Supererogation: Its Status in Ethical Theory*; Archer, “Supererogation and Intentions of the Agent.” respectively); self-sacrifice (for example, Jackson, “The Nature of Supererogation”; Pybus, “Saints and Heroes”; McGoldrick, “Saints and Heroes: A Plea for the Supererogatory.”); and so on. I leave them aside here and give only a very minimal account of the supererogatory. This is because the tension that gives rise to the paradox of supererogation arises from the two features of being optional and morally better. Once it is demonstrated that there are optional, better acts, there is no barrier to claiming that there are optional, better *and meritorious* acts or optional, better *and altruistically intended* acts and so on.

<sup>9</sup> McNamara, “Making Room for Going Beyond the Call.” A classic articulation of this position can be found in Urmson, where he calls it the ‘threefold classification’ (Urmson, “Saints and Heroes,” 60). Horgan and Timmons refer to it as the ‘tripartite deontic scheme’ (Horgan and Timmons, “Untying a Knot from the Inside Out: Reflections on the ‘Paradox’ of Supererogation,” 29.). I prefer McNamara’s terminology as he clearly distinguishes it from another threefold classification—‘The Traditional Threefold Classification’—whereby all acts are required, forbidden or *optional*. This latter view allows for the possibility of the supererogatory, while the Strong Threefold Classification does not as it assumes that an action is optional only insofar as it is morally indifferent, and supererogatory actions are by definition not morally indifferent. My thanks to an anonymous reviewer for encouraging greater clarity on this point.

<sup>10</sup> For a comprehensive review of the problems of making room for the possibility of supererogation on the main ethical theories of Virtue Ethics, Kantianism, Utilitarianism and Contract Theory, see Part I of Heyd, *Supererogation: Its Status in Ethical Theory*.

none the less virtuous to perform those acts.”<sup>11</sup> This relates to Heyd’s positive and negative justification of supererogation: the latter concerns the justification of placing restrictions on the scope of duty, while the former concerns the value that supererogatory actions possess.<sup>12</sup>

While these two questions are conceptually distinct, nevertheless, by answering the second question—by providing an account of the *value* of the supererogatory—the first question can be answered—of why we should allow space for the supererogatory. I will call this the ‘Intrinsic Value Argument’ for supererogation.<sup>13</sup> This move—from the *value* that supererogatory actions might have to a reason to make room for the possibility of supererogatory actions on an ethical theory—is the Panglossian mistake that I address in this paper and provide an alternative to. I turn now to considering this argument in more detail.

### *1.3. The Intrinsic Value Argument*

Heyd asks us to imagine “a world in which all morally good acts are also obligatory and in which individuals are capable of carrying out their duties with ease (and with no conflict with their personal goals and aims). Is something of moral value missing in such a world?”<sup>14</sup> It is the thought that ‘yes, something is missing’ that gives rise to the Intrinsic Value Argument. That this is a common thought can be seen from the fact that the adequacy of a moral theory is often taken to be dependent on its treatment of supererogation.<sup>15</sup>

Note, however, that there is an ambiguity in the idea that supererogatory actions are valuable. On the one hand, supererogatory are morally good (in fact, better than other permissible acts) and this does provide a source of moral value. They might even be the action that is morally *best* to do. However, this is not the sort of value that can provide the justification of why we should allow room for the supererogatory on an ethical theory, because obligatory actions can also be morally good (we can even imagine cases where what is obligatory is what is morally *best*). If we imagine a world without the supererogatory, as Heyd asks us to do, we do not imagine a world without morally good acts. Thus, in order for the value of the supererogatory to be an argument for limiting duty, it must necessarily be a value that the supererogatory does not share with the obligatory. This value must, therefore,

<sup>11</sup> Clark, “The Meritorious and the Mandatory,” 29.

<sup>12</sup> Heyd, *Supererogation: Its Status in Ethical Theory*, 166.

<sup>13</sup> I take this term from Kagan’s discussion of this argument in Heyd (Kagan, “Does Consequentialism Demand Too Much? Recent Work on the Limits of Obligation,” 243.).

<sup>14</sup> Heyd, “Supererogation.”

<sup>15</sup> Baron, “Kantian Ethics and Supererogation,” 238.

lie in the *optional* nature of supererogatory actions as this value is something that would not be captured on a theory where every act of moral significance was morally required or forbidden. If the Intrinsic Value Argument manages to provide an account of the intrinsic value of the *optionality* of supererogatory acts it would give us “a reason to reject a general requirement to promote the good.”<sup>16</sup>

The Intrinsic Value Argument must therefore invoke the value of optionality. What exactly the value of optionality is could be spelt out in many ways. However, there is a theme amongst theorists who make the Intrinsic Value Argument: the value of optional actions lies in autonomy.<sup>17</sup> I briefly outline four theorists who make this argument.

Heyd explicitly states that autonomy provides the basis for both the negative and positive justification of supererogation (and thus answers both of Clark’s questions): autonomy grounds the value of the supererogatory, which in turn justifies the placing of limits on what can be required of us.<sup>18</sup> The positive value of supererogation can be seen by “pointing out the freedom of the individual involved in purely optional choice.”<sup>19</sup>

Clark too argues that autonomy—“the value of freedom to control and plan one’s life and to choose the style in which one lives”—provides the answer to why we ought to make room for the supererogatory.<sup>20</sup> This is also why supererogatory acts are valuable: the virtue of a supererogatory act comes from it being “a personal sacrifice calculated to benefit others, a sacrifice freely made by an agent not morally required to make it.”<sup>21</sup> Of course, many morally obligatory actions involve sacrifice and benefit others. That is why, as Dancy says in his discussion of Clark’s argument, “It is the optionality that is crucial.”<sup>22</sup> Thus, Clark’s argument shares a central claim with Heyd’s: that, as Dancy puts it, a supererogatory action “acquires value from its being optional for the agent.”<sup>23</sup>

<sup>16</sup> Kagan, “Does Consequentialism Demand Too Much? Recent Work on the Limits of Obligation,” 243.

<sup>17</sup> There is a question about whether the value of optionality and the value of autonomy are distinct. As Dancy says, we can understand an optional action as “one that forms part of an agent’s personal projects, as opposed to his contribution to the general climate of social cooperation” (Dancy, “Supererogation and Moral Realism,” 183.). If so then “there is no real gap between optionality and the exercise of autonomy” (Ibid.) and thus there would be no real gap between the *value* of optionality and the *value* of autonomy. However, we can imagine ways in which they come apart.

<sup>18</sup> Heyd, *Supererogation: Its Status in Ethical Theory*, 172 and 177.

<sup>19</sup> Ibid., 166.

<sup>20</sup> Clark, “The Meritorious and the Mandatory,” 29.

<sup>21</sup> Ibid., 30.

<sup>22</sup> Dancy, “Supererogation and Moral Realism,” 183.

<sup>23</sup> Ibid.

Both Joseph Raz and Michael Ferry also argue that the class of supererogatory should be made room for on an ethical theory because optionality is valuable from the point of view of autonomy. Raz claims the value of the autonomy “includes the value of persons forming plans and ideals according to which they will conduct their life.”<sup>24</sup> He emphasises the conflict, as do the other authors mentioned here, between our plans and projects—and thus our autonomy—and the demands to promote the welfare of others. Ferry also appeals to the importance of our plans and projects: “If we were accountable for doing our very best, then few of our decisions would be protected from morality’s demands, and our freedom to pursue personal projects would be undermined.”<sup>25</sup>

However, there are deep problems with these arguments that derive the value and justification of supererogation from the value of autonomy. These include concerns about the value of autonomy itself; whether this value actually explains the value of the optional or is simply a restatement of the author’s commitment to that latter value; and whether arguing for the value of the class of the supererogatory before the *possibility* of such actions has been established seems to have gotten the cart before the horse.

At the heart of these worries is, I believe, a concern over the role that *value* is playing in arguments for the supererogatory. Dancy, for example, argues “The fact, if it is a fact, that supererogatory actions are optional may perhaps add to their value. But it does not contribute to the explanation of why they are not duties [...], and whatever value is added by optionality is surely insufficient to justify the high place we assign to the supererogatory.”<sup>26</sup> There are reasons to doubt that there really is an “entirely distinctive form of value” that is restricted to the supererogatory.<sup>27</sup> Shelly Kagan too has expressed doubts about Heyd’s argument from autonomy and the Intrinsic Value Argument in general.<sup>28</sup> This looks like it is quite a blow for supererogationists. However, in this paper, I provide an alternative strategy to reject the Strong Threefold Classification.

<sup>24</sup> Raz, “Permissions and Supererogation,” 167.

<sup>25</sup> Ferry, “Does Morality Demand Our Very Best? On Moral Prescriptions and the Line of Duty,” 15.

<sup>26</sup> Dancy, “Supererogation and Moral Realism,” 185.

<sup>27</sup> Ibid.

<sup>28</sup> Kagan, “Does Consequentialism Demand Too Much? Recent Work on the Limits of Obligation.”



### *1.4. Supererogatory Spandrels*

By starting from the point of view that supererogatory actions are intrinsically valuable, theorists paint a Panglossian picture of supererogation: inferring from the value of the class of the supererogatory that it ought to be included on our ethical theories *because* of that value. Gould and Lewontin recommended that the evolutionary biologists entertain the possibility that some phenotypic characteristics are spandrels. I recommend a similar strategy in the case of supererogation. We should see some cases of supererogatory actions as moral spandrels: structural by-products of moral commitments many already make regardless of any particular commitment to the value of supererogatory actions. This is not to deny that they *are* valuable. Of course, given the possibility of supererogatory actions, it is likely that particular significance will then be placed upon their performance. However, the value of the supererogatory, just like the ceiling designs at San Marco, should not lead us to think that the only justification for this class of moral action is their value.

I discuss commitments in the following two areas: first, rights and second, the distribution of burdens among a group. There may be other areas than the two identified here that give rise to supererogatory spandrels. Nevertheless, these commitments, with their implications for supererogation, are enough to establish space for the supererogatory.

## 2. RIGHTS AND SUPEREROGATORY FORBEARANCES

### *2.1. Rights and Paired Rights*

In addition to legal rights, many ethicists are also committed to the existence to moral (or natural) rights. The particular rights that are of interest are those according to which I am both entitled to do something and also entitled not to do it. The routine commitments made by many to rights of this sort entail the existence of optional acts, which can, in some circumstances, be better than permissible alternatives. I begin therefore by looking more closely at this type of rights.

Suppose I have the right to do  $\varphi$ . In this context,  $\varphi$  can refer either to an action or to the creation or annulment of other rights and duties.<sup>29</sup> For

<sup>29</sup> On a Hohfeldian analysis, the former constitutes a privilege-right while the latter is a power-right, which involves the ability within a set of rules to create, waive or annul privilege and claim rights (Wenar, "The Nature of Rights," 231). No commitment to a Hohfeldian analysis is needed for my purposes here and it is important to note that Hohfeld's discussion is of legal rights, rather than moral rights. I mention it only to situate it in the Hohfeldian-laden

example, I have a right to drink this cup of coffee that I purchased. I also have the right to promise to read over your work, which creates a claim on your behalf and a duty for me: to do what I have promised.

What is of interest is not just having a right but having a *paired* right: a right to  $\varphi$  and a right *not* to  $\varphi$ . Take a judge who lacks judicial discretion. When faced with a criminal and a verdict of guilty, there is a sentence she is required to give. She therefore has the right to sentence the criminal in accordance with the law but no right not to: thus, while she has a right, she doesn't have a *paired* right. However, this is not true of most rights. Often we have a choice as to whether or not to act on the right that we have. I have the right to drink my coffee and a right not to if I so choose. I have the right that a debtor pay me but I also have the right to waive the debt.

## 2.2. Rights and Optionality

Let us suppose that a paired right exists with respect to some action  $\varphi$ . We therefore have no duty to  $\varphi$  and no duty not to  $\varphi$ .<sup>30</sup> Therefore, we are neither required to  $\varphi$  nor forbidden from  $\varphi$ -ing. Thus, on such occasions,  $\varphi$ -ing will be optional.

So far, so boring. We can come by the existence of optional actions, it might be thought, much more easily than this. We do not need to appeal to rights in particular.<sup>31</sup> Without any particular commitment to rights, we might think that

discourse on rights and because his system of classification of different types of rights is useful. For further discussion of Hohfeldian incidents, see Hohfeld, "Some Fundamental Legal Conceptions as Applied in Judicial Reasoning." and Wenar, "The Nature of Rights."

<sup>30</sup> Some might think that it isn't so straightforward that I have no obligation to something in virtue of having a right to do so. For example, some might agree with the ACLU's defense of the *right* of neo-Nazi's to march in Skokie, Illinois, while doubting that it was not morally *wrong* to march. Note, however, that this does not amount to a challenge to my argument here if the right to march is *legal* rather than moral or if it is thought that they have a right that it would be morally *bad* (rather than impermissible) for them to exercise. Furthermore, under the uncontroversial assumption that not all rights are of this form, my argument still holds that on any plausible account of rights, room for the supererogatory is made.

<sup>31</sup> Thought it is interesting to note that many authors on supererogation talk of agents being 'within their rights' to refuse to perform a supererogatory act (for example, Chisholm, "The Ethics of Requirement," 152; Driver, "The Suberogatory," 288; Dancy, *Moral Reasons*, 139; Clark, "The Meritorious and the Mandatory," 29–31.). There is also a long history of discussions of supererogation and agent-centred prerogatives (see, for example, McNamara, "Supererogation, inside and out: Toward an Adequate Scheme for Common-Sense Morality"; Scheffler, *The Rejection of Consequentialism*). These prerogatives give an agent permission to do less than what is best. The existence of agent-centred prerogatives allows for supererogatory action. Moral rights are a form of agent-centred prerogatives. My discussion of rights is nevertheless fruitful because it makes clear that commitments to the existence to rights can come prior to any commitment to the supererogatory. The main justifications of rights (and

certain actions, such as wearing this pair of socks rather than that pair, are optional. However, my argument goes beyond this. Choosing to wear this pair of socks rather than that pair is *discretionary*. I am allowed to use my discretion to decide which pair to wear. However, this is precisely because these are not morally significant actions. To reject the Strong Threefold Classification, it must be shown that morally *significant* actions can be optional. This is possible to do by appeal to rights, as, by their nature, rights are frequently rights over—or rights to—things of great moral significance.

This can be seen from the fact that many acts that involve the exercise (or waiving) of a paired right will be morally better than the least we could permissibly have done, on a variety of understandings of ‘morally better’. I have a right to waive the debt that you owe me; I also have the right not to waive it. Often it will be morally better if I choose to waive it, as it will transform the loan into an act of munificence, freeing you from having to repay me. It is easy to see that in many cases exercising our rights (or choosing to refrain from doing so) will be morally better than not.<sup>32</sup>

Anyone who accepts the existence of paired rights on any plausible account of rights therefore also accepts the possibility of supererogatory actions. Those who wish to deny the possibility of supererogatory actions must deny the existence of paired rights. While this is a possibility, it is a high price to pay.

### *2.3. Rights and the Strong Threefold Classification*

It might be thought that I have been too hasty here. My argument for the possibility of supererogatory actions—actions that are good and optional—presupposes that establishing that an action is optional and establishing that it is good are separate issues. It might be argued, however, that we do not know if an action is optional or not until we have determined whether it is good. For example, by recognising the goodness of helping others in severe distress at little cost to ourselves, we might realise that our immunity from others creating claims against us is not as substantial as we perhaps thought. This in turn (so the argument goes) informs us about our rights. If this is the case, then I have put the cart before the horse in arguing for the possibility of optional actions before discussing the good done by performing the acts in question.

thus of a certain type of agent-centred prerogative) allow for supererogatory actions, without relying on the *value* of supererogatory actions.

<sup>32</sup> That is not to say, of course, that on every occasion any exercise of my right (or waiving of my right) will be morally better. To establish the possibility of supererogatory action, it is enough to show that the exercise of a right (or the waiving of that right) is at least sometimes morally better.

There are two types of rights that would not entail the possibility of supererogation. The first are those rights that we have a duty to (or not to) exercise (such as the judge who lacked judiciary discretion); the second are those rights that we possess only because they concern things of no moral importance (such as choosing between this or that pair of identical socks). However, no plausible account restricts rights to these two types. A debt would cease to be a debt at all if the person to whom the debt is owed has no immunity from the debt being annulled whenever it would be good if it was. In fact, neither of the two main accounts of rights—the Will Theory and the Interest Theory—restrict the rights that they defend to those that we have a duty to exercise (or to refrain from exercising) or to those regarding actions that are not morally significant. A commitment to either of these, therefore, is a commitment to the possibility of supererogation action.

#### *2.4. Supererogatory Forbearances*

A further concern might be that, while these commitments entail the possibility of supererogatory action, they only entail the possibility of some strange or unimportant cases of such acts. However, the rights discussed above in fact establish the possibility of some central types of supererogatory action, namely supererogatory forbearances, and also pardon, forgiveness, and mercy, which are a species of supererogatory forbearances.

Heyd describes an act of forbearance as supererogatory “when a person does not do something which he is morally *entitled* to do, like demanding less than his due, or not insisting on his rights (granting ‘a period of grace’).”<sup>33</sup> There are times when we have a claim against another: that they, for example, pay us what is owed. There are at least some occasions when we have a paired right over these claims such that we can either insist on them or, instead, waive or attenuate them by, for example, reducing or annulling the debt. These paired rights therefore make room for the supererogatory forbearance of not demanding the debt be repaid even though we are entitled to.

We can see this in the case of mercy (the same claims apply in the case of forgiveness and pardon). What is of interest here is what Heyd calls ‘non-corrective’ mercy (rather than mercy used to correct an undeserved punishment meted out by unjust legal system).<sup>34</sup> Non-corrective mercy cannot be a moral duty because the presumption is that the full punishment is entirely just, and therefore it is not the case that we are morally required to refrain from imposing the just punishment. Although it might be the case that the person *deserves* (in the sense of ‘is worthy of’) mercy, this does not mean

<sup>33</sup> Heyd, *Supererogation: Its Status in Ethical Theory*, 152. Original emphasis.

<sup>34</sup> *Ibid.*, 156.

that they are *entitled* to it.<sup>35</sup> Nevertheless, although we have the right to see that the just permission is meted out, we can also have the right to attenuate or (in some circumstances) withdraw the punishment, for example if we are a judge with the procedural authority to do so. Thus, it follows that these actions—fornearances, mercy, pardon, and forgiveness—can be shown to be supererogatory without appealing to the intrinsic value such actions have in virtue of their optionality.

A commitment to paired rights as described here entails a commitment to the possibility of supererogatory acts. My strategy of identifying supererogatory spandrels is not, however, limited to rights. There is another area where this strategy can be implemented: the distribution of burdens among a group.

### 3. VOLUNTEERING AND THE DISTRIBUTION OF BURDENS AMONG A GROUP

#### *3.1. Proportional Distribution of Costs*

Sometimes it is not possible to distribute the costs of achieving a group aim among the members of a group in a way that is ‘proportional’. By a lack of proportional distribution I mean that, *if it were possible*, the costs of achieving the aim of a group would be spread among the members of that group, but for some reason it is not possible to distribute the costs in that way.<sup>36</sup> Suppose someone needs a kidney and any of his four sisters could donate one (they are all matches and so on). A proportional distribution of costs would, perhaps, mean donating a quarter of a kidney and thus only taking on a quarter of the cost of doing so—but this cannot be done. To achieve their collective aim of saving their brother, one and only one of them, must donate.

#### *3.2. Where there is No Identifiable Duty-Holder*

In cases where the costs cannot be distributed, it is arguably optional for any particular member of the group to take the costs upon themselves. In the case of the kidney donation, it is plausible to think that no particular sister can

<sup>35</sup> *Ibid.*, 160.

<sup>36</sup> Now there may be circumstances in which although a *particular* cost cannot be distributed, the overall cost can be. For example, suppose only one out of a set of siblings can have their infirm mother live with them; however, while that specific cost cannot be distributed, the other siblings could still contribute, say, to the cost of her care. All I want to commit to here is that there are at least some cases where the *overall* costs cannot be distributed proportionately. For simplicity, I restrict my discussion to cases where the costs cannot be distributed at all, such as in the case of kidney donation.

be morally required to give a kidney. It cannot be the case that all the sisters are required to give their kidneys, since only one is needed. Nevertheless, as all the sisters are equally placed to donate, no one particular sister can be singled out such that *she* is the one required to give her kidney. In this case, there would be no identifiable duty-holder. This means that if any one of the sisters were to donate her kidney, this would be optional. Not only would it be optional, it would be morally better than not doing so. It would save the life of her brother and save her sisters from taking on this cost.<sup>37</sup> So, the possibility of a morally optional act that is better than a permissible alternative—the basis of the supererogatory—arises as a spandrel, simply a by-product of accepting that a lack of proportional distribution of costs leads to being unable to identify a duty holder.

### 3.3. *Where there is an Identifiable Duty-Holder*

The above discussion, however, is based on the assumption that in some cases it is impossible to achieve a proportional distribution. There are two possible objections to this assumption. Firstly, some might argue that the member of a group who would be the *least* disadvantaged by bearing the costs (even when these costs cannot be distributed among the other members) is required to do so. Thus, a duty-holder is identified. For this person, it would not be optional to bear the costs. Secondly, it might be proposed that all the members of a group have a conditional obligation to undertake the costs if, for example, they are chosen to do so by a fair procedure or chosen at random.

On the face of it, these proposals look like serious problems because they assert the existence of a moral requirement. However, both can be addressed in the same way. Let us return to the case of kidney donation. The first proposal is that the sister *least* inconvenienced by doing so is morally required to donate her kidney. The second is that the sister selected by fair (or random) procedure is required to donate. This alone doesn't rule out the possibility of supererogatory acts. To rule out this possibility, given that supererogatory actions are neither morally required, nor morally forbidden, nor morally bad, it would have to be argued that it is (i) morally obligatory, (ii) morally impermissible or (iii) morally bad for another member of the group to offer to undertake the costs (in this case, offer their own kidney) in place of the person who is picked out as morally required.

It does not make sense to think that the sister is morally *obligated* to volunteer in this case, as that is just to say that they are morally obligated to

<sup>37</sup> Note that it is not just that the group has achieved something morally good, but that the sister who undertakes the cost has done something morally good that cannot be attributed to the other sisters.

donate their kidney, and it has already been stipulated that another sister has been selected as the person obligated to do so. It is equally implausible to think that it is always morally impermissible. While some may doubt the claim that no particular member is required to take the costs upon themselves when the costs cannot be proportionately distributed, it is hard to doubt that other members can at least sometimes permissibly *offer* to take the costs upon themselves. This is significant because a commitment to the permissibility of someone making such an offer in place of the person who is required entails a commitment to optional actions. It would be permissible and not required to offer in this way, as either the person doing the offering would be more disadvantaged by doing so than the person to whom the moral requirement applies, or because, in the other scenario, their conditional obligation is fulfilled because someone else was selected by fair procedure. Offering to take the cost would therefore be optional.

It is similarly implausible to think that such an offer would *always* be morally bad.<sup>38</sup> Just as in the case where it was supposed that there was no identifiable duty-holder, it would still usually be morally better to offer than not, given that it would save the life of another and would save someone else from bearing the costs. It might not be best but it would be good.<sup>39</sup> Thus, the possibility of a supererogatory act arises simply as a by-product to commitments concerning the permissibility of offering to undertake costs even when it is the responsibility of another to do so.

### *3.4. Volunteering*

The supererogatory spandrels that emerge as by-products of the commitments outlined—those that arise from a lack of proportional distribution of burdens among a group—establish a very important class of supererogatory actions: volunteering. As Heyd says, “in its wider general meaning (‘undertaking a service of one’s own free will’ according to the O.E.D.) [volunteering] virtually characterises any supererogatory action.”<sup>40</sup> More specifically, volunteering involves “the offering of one’s services (help, etc.) to do something which is collectively *required of a group*” where the task “does not allow for the [proportional] distribution of the burden among the

<sup>38</sup> In some circumstances, an offer to donate may well be bad, and even so bad as to be impermissible. However, so long as this is not the case on *every* occasion, room for supererogation is made.

<sup>39</sup> It is compatible on my account to regard the supererogatory act as the act of *volunteering* rather than the act of *donating*. I take both to be (on the examples described here) both optional and morally good.

<sup>40</sup> *Ibid.*, 150.

members.”<sup>41</sup> Whenever a burden cannot be distributed proportionally among members of a group, it is an act of supererogatory volunteering for someone to (offer to) undertake that burden when they have no obligation to do so (either because no member of the group is obliged or because they are offering to undertake the burden in the place of the person who is obliged) and when it is morally better than the least they could permissible do. The supererogatory spandrels that arise from these commitments concerning the distribution of burdens among a group are cases of supererogatory volunteering, a central type of supererogatory action. Thus, just as in the case of rights, room is made for this class of moral action without reference to the intrinsic value that the supererogatory has in virtue of its optionality.

#### 4. THE IDENTIFICATION OF SPANDRELS AS A STRATEGY

One central approach to answering the paradox of supererogation is to appeal to the intrinsic value of the class of supererogatory action. I have demonstrated that the paradox can be answered in a different way, by giving two examples of areas in which supererogatory acts arise as spandrels. These have established some important categories of supererogatory actions: supererogatory forbearance, forgiveness, pardon, mercy and volunteering. While I have not in this paper defended the claim that *all* types of supererogatory actions can be explained as spandrels<sup>42</sup>, it may well turn out that they can be.<sup>43</sup>

##### *4.1. Defending Supererogationism*

An advantage of my account is that, while I avoid the unnecessary appeal to the intrinsic value of optionality, I also give an account that allows for a full defence of the supererogatory against the paradox of supererogation, avoiding what Heyd calls qualified supererogationism (in contrast to unqualified

<sup>41</sup> Ibid. Original emphasis.

<sup>42</sup> For example, in addition to the categories mentioned here, Heyd includes in his taxonomy of supererogatory actions saintliness and heroism, beneficence (including charity, generosity, and gifts) and favours (Ibid., 142–150.).

<sup>43</sup> For example, Murphy accounts for supererogatory beneficence through a commitment to the limit of the demands that can be placed on us being determined in the *ideal* world, rather than the non-ideal world (Murphy, *Moral Demands in Nonideal Theory*). Alternatively, there is a suggestion in Calhoun on decency that small acts (such as favours and kindnesses) are supererogatory actions (rather than simply the decent thing to do) in situation where the acts are not clearly or unambiguously good to do (Calhoun, “Common Decency,” 8.).



supererogationism)<sup>44</sup> and what Dancy calls weak supererogationism (in contrast to strong supererogationism)<sup>45</sup> whereby supererogatory actions are not fully optional but are, rather, reduced to a form of duty. For simplicity I use Dancy's terms in this paper.

There are three main concerns about any account that defends a weak supererogationism. I articulate these worries and then show how my argument for considering some supererogatory actions to be spandrels avoids all these worries and can thus be seen as a strong supererogationist position.

Firstly, there is the worry that, while qualified supererogationist accounts recognise the category of supererogatory acts, they only do so by seeing these acts as duties that are, for example, imperfect or unenforceable. Heyd claims that we should reject these views of supererogation because, he believes, supererogatory actions go *beyond* duty rather than being reducible to imperfect or unenforceable duties.

Secondly, according to weak supererogationism, acts are only supererogatory because we have some sort of excuse or exemption for failing to perform them. Weak supererogationism “sees the supererogatory act not as an act that is not our duty despite its value, but as an act that, despite being our duty, or at least being one we ought to do, is one whose non-performance does not attract sanction, disapproval, or penalty. The weak supererogationist hold that we ought to do these actions because of their value, but that nobody is going to blame us if we don't [...]”<sup>46</sup> Heyd claims that we should resist this idea because it is part of the nature of supererogatory acts that we do not need an excuse to fail to perform them.

Thirdly, there is the concern that, as weak supererogationists play down “the positive moral value of supererogation”, they thereby relegate it “to the morally neutral category of the ‘permitted.’”<sup>47</sup> This is problematic, Heyd argues, because such views “run the risk of losing sight of what makes supererogatory action uniquely meritorious and praiseworthy.”<sup>48</sup>

Both authors agree that weak supererogationism “is distinctively unsatisfactory as a position, since it is naturally implausible.”<sup>49</sup> Dancy describes it as “one of the positions of which Aristotle would say that nobody

<sup>44</sup> The clearest statement of his distinction (which is less clearly expressed in his book) is given in his updated Stanford Encyclopaedia entry for ‘Supererogation’. It is from this that I tease out his concerns in order to get a more general picture of the distinction he wants to draw. This is required as his discussion is predominantly of examples of particular theorists he classifies as qualified supererogationists, rather than a sustained attempt to articulate the precise difference between qualified and unqualified supererogationism.

<sup>45</sup> Dancy, “Supererogation and Moral Realism”; Dancy, *Moral Reasons*.

<sup>46</sup> Dancy, “Supererogation and Moral Realism,” 175.

<sup>47</sup> Heyd, “Supererogation.”

<sup>48</sup> *Ibid.*

<sup>49</sup> Dancy, *Moral Reasons*, 131.

would hold it except as the result of a theory.”<sup>50</sup> I agree. It is an advantage of my defence of supererogation that is not a form of weak supererogationism.

I do not reduce supererogation to a sub-species of duty. The optionality of supererogatory acts is generated by other commitments and not because they are conceived of as ‘supererogatorily required’ or as a form of ‘imperfect duty’. I avoid the second worry as it does not follow from my account that we need any sort of excuse or exemption for failing to perform a supererogatory act. Furthermore, I do not reject, doubt or overlook the positive moral value of the supererogatory. I do not argue that supererogatory acts are merely ‘permitted’ or ‘morally neutral’, nor do I lose sight of what makes supererogatory acts meritorious. Just as beauty of the spandrels of San Marco ought not to be downplayed because they are ‘just’ spandrels, my approach of identifying supererogatory acts as moral spandrels should not be seen as dismissive or downplaying their significance.<sup>51</sup> Nothing in my view makes it hard to see why supererogatory acts are valuable, important or meritorious. I simply claim that we do not need to appeal to these features to explain why room ought to be made for the supererogatory.

My position is therefore one of a strong supererogationist. Both Heyd and Dancy claim that the first defence of strong supererogationism is the claim that “it is a good thing that not every action having value should be considered as a duty or as an action that ought to be done.”<sup>52</sup> This explains the trend among defenders of the supererogatory to appeal to the intrinsic value of the optionality of supererogatory acts. However, my strategy of justifying room for going beyond the call of duty without appealing to the value of the supererogatory is no weaker than supererogationist strategies, like Heyd’s, that do.

#### *4.2. The Advantages of the Spandrels Approach*

The strategy of identifying supererogatory spandrels has several advantages.

It provides an important avenue for those supererogationists putting forward arguments for the supererogatory and defending it against the paradox of supererogation. It does not require arguments for the special value of the supererogatory or the optional, which have been demonstrated to be problematic and unconvincing. Furthermore, I have demonstrated that, instead of trying to find *one* argument for why our duties ought to be limited, perhaps there are several. These heterogeneous routes lead to the same

<sup>50</sup> Ibid.

<sup>51</sup> My thanks to an anonymous reviewer for pressing me to make this clearer.

<sup>52</sup> Dancy, “Supererogation and Moral Realism,” 175–6.

conclusion: that supererogatory actions are possible. Thus, I avoid the critique that no one argument will explain both heroic and small acts of supererogation or (for example) both forgiveness and volunteering. The value that we place on supererogatory actions may well have the same source—they are morally good for people other than the agent—and yet the reason why there is room for such actions may come from a variety of ethical commitments.<sup>53</sup>

Of course, I have not given a defence here of the commitments discussed that give rise to supererogatory actions. Therefore, it might be objected that I have failed to give an argument against being, for example, an act consequentialist or any other kind of theorist who adamantly rejects the supererogatory. Nonetheless, understanding supererogatory acts as spandrels gives us greater reason to resist these positions. Other commitments in ethical thought stand and fall with supererogation. There is therefore a high price that must be paid by those who hold fast to the claim that there are no supererogatory actions: they must also be committed to implausible views on rights and distributions of burdens among a group.

At first glance, this debate between supererogationists and anti-supererogationists as to the possibility of supererogatory acts seems to be of limited concern for ethical theory more generally. The general absence in ethical discourse of discussions of supererogation suggests that many ethicists believe that the possibility of supererogatory actions has little implication for the areas of ethics they are interested in.<sup>54</sup> The arguments from the intrinsic value of supererogatory actions do little to challenge this view. Those who need convincing that room should be made for the supererogatory are those who are ambivalent about the possibility of supererogatory acts. Thus, they are likely to be ambivalent about the *value* of such actions. I have demonstrated that an argument with broader appeal than the Intrinsic Value Argument can be made, one more likely to convince those who think they

<sup>53</sup> The considerations presented here do not rule out that some further considerations give rise to both the commitments to rights and distribution of burdens discussed here *and* supererogation (my thanks to an anonymous reviewer for pointing this possibility out). However, nothing I have said here relies on such further considerations. This has the advantage that it allows for a variety of reasons to be committed to, for example, rights, any of which will also be reasons to be committed to the possibility of supererogatory action. Furthermore, while it is true that some forms of deontology is committed to both rights and supererogation, it remains true that often theorists are committed to rights and *therefore* to deontology (over, say, consequentialism) rather than vice versa. I therefore leave aside issues of conceptual priority, except to note that significant types of supererogatory actions arise as by-products of commitments routinely made in other areas of ethics.

<sup>54</sup> I agree with Heyd that “there is a lack of proportion between the importance ascribed to acts of supererogation in everyday life and the relative paucity of theoretical analysis of these acts in the history of ethics” (Heyd, *Supererogation: Its Status in Ethical Theory*, 1).

hold no firm views on the supererogatory or its value. Many ethicists already routinely make commitments in other areas of ethical thought that entail the possibility of supererogatory acts. No appeal to the value of supererogatory actions is needed. Of course, once we have supererogatory acts, particular importance is naturally placed upon them, but their current value need not be the explanation for their existence.

Thus, even if we accept, as Dr Pangloss does, that this is the best of all possible worlds, that is not to say that we have to accept that this is *because* everything is made for the best purposes. We do not have things like rights because of the supererogatory; we have the supererogatory because of things like rights.

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