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THE MORAL SPECIFICATION OF RIGHTS: A RESTRICTED
ACCOUNT

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ABSTRACT. I begin this paper by summarizing and critiquing the debate between two views: Moral Specificationism about rights and Moral Generalism about rights. I then show how the conceptual framework that Wesley Hohfeld uses to describe legal rights can also clarify the discussion of moral rights, in general, and of moral specification, in particular. Drawing upon Hohfeld's framework, I argue for the Restricted Account of the moral specification of rights, which stakes out a middle-ground between the view that all justified exceptions are built into the description of rights and the view that no exceptions are built in. According to the Restricted Account, if and only if the justification for an exception is the same as the justification for rights within the broader ethical theory, then the exception is specified in the right. The Restricted Account is compatible with a wide variety of theories of the function of rights.

Imagine that you approach your car on a cold, winter morning to find that a homeless person has stolen into it overnight to sleep. She wakes up and tells you, 'I am sorry about this, but I was freezing. The wind was particularly bad and the nearest shelter many miles away. I saw that you had blankets in the backseat of your car and knew that I could survive through the night only if I spent it here'. What has occurred overnight with respect to the moral right that you have against others entering your car? Surely, the homeless person was justified in entering your car. Yet, did she infringe upon your right when she entered? Alternatively, is the right that you have

against others entering your car specified in such a way that it includes an exception for justifiable cases like this one?¹

In what follows I will present the debate between those who advance the moral specification of rights and those who deny this view. According to *Moral Specificationism*, the very description of any right includes all of its exceptions, those morally justifiable circumstances in which it is permissible for someone to act in a way that, ordinarily, would appear to be at odds with the right.² According to an opposing view I will call ‘Moral Generalism’, every exception that is truly justified is an infringement of a right. Like a violation, an infringement amounts to an interference with the right. An infringement is simply a justified interference. For the moral generalist, the right still matters morally; however, its normative force is outweighed by the considerations that justify the interference.³ In Section 1 I summarize Judith Jarvis Thomson’s arguments in favor of the Moral Generalist position. Among these arguments is the Compensation Objection to Moral Specificationism. I defend this argument against critiques by William Parent, William Prior, and John Oberdiek. I then summarize and respond to Oberdiek’s arguments for Moral Specificationism. Though I suggest that these arguments fail, I also resist endorsing the moral generalist position. In Section 2 I show how the conceptual framework that Wesley Hohfeld uses to describe legal rights can also clarify the discussion of moral rights, in general, and of moral specification, in particular.⁴ Drawing upon Hohfeld’s framework, in Section 3 I argue for the *Restricted Account* of the moral specification of rights, which stakes

¹ This example purposefully resembles Joel Feinberg’s famous cabin case, which he uses to defend what I shall call Moral Generalism. See Joel Feinberg, *Rights, Justice, and the Bounds of Liberty* (Princeton, NJ: Princeton University Press, 1980), 221–225.

² See, for example, John Oberdiek, ‘Lost in Moral Space: On the Infringing/Violating Distinction and Its Place in the Theory of Rights’, *Law and Philosophy*, Vol. 23, No. 4 (Jul., 2004), pp. 325–346; John Oberdiek, ‘What’s Wrong with Infringements (Insofar as Infringements Are Not Wrong): A Reply’, *Law and Philosophy*, Vol. 27, No. 3 (May, 2008), pp. 293–307; John Oberdiek, ‘Specifying Rights Out of Necessity’, *Oxford Journal of Legal Studies*, Vol. 28, No. 1 (2008), pp. 127–146; William Parent and William Prior, ‘Thomson on the Moral Specification of Rights’, *Philosophy and Phenomenological Research*, Vol. 56, No. 4 (Dec., 1996), 837–845; Russ Shafer-Landau, ‘Specifying Absolute Rights’, *Arizona Law Review* 37 (1995); Judith Jarvis Thomson, ‘A Defense of Abortion’, *Philosophy & Public Affairs*, Vol. 1, No. 1 (Autumn, 1971), pp. 47–66.

³ Besides Feinberg, see, for example, Judith Jarvis Thomson, ‘Self-Defense and Rights’, in W.A. Parent (ed.), *Rights, Restitution and Risk*, 37 (1986); Phillip Montague, ‘When Rights are Permissibly Infringed’, *Philosophical Studies* 53, 347–366 (1988); and Herbert Morris, ‘Persons and Punishment’, *Monist* 52, 475–501 (1968).

⁴ See Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions* (New Haven: Yale University Press, 1923).

out a middle-ground between Moral Specificationism and Moral Generalism, or between the view that *all* justifiable exceptions are built into rights and the view that *no* exceptions are built in. According to the Restricted Account, if the justification for an exception is the same as the justification for rights within the broader ethical theory, then the exception is specified in the right; however, if the justification for the exception is different from the justification for rights, then the exception is not specified by the right, and acting in accordance with this exception constitutes an infringement of the right. As I shall explain, the moral apparatus introduced by the Restricted Account is compatible with a wide variety of theories of the function of rights.

I. THE DEBATE OVER THE MORAL SPECIFICATION OF RIGHTS

For the advocate of Moral Specificationism, all rights are specified to account for cases in which exceptions to those rights are justified. If an action interferes with a right, then that means that the circumstances in which that action occurred are not among the specified exceptions to a right, and the action will qualify as a violation of that right. Rights violations are always unjust.⁵

Judith Jarvis Thomson initially supported Moral Specificationism. She wrote, 'The right to life consists not in the right not to be killed, but rather in the right not to be killed unjustly...For if you do not kill [a person] unjustly, you do not violate his right to life, and so it is no wonder you do him no injustice'.⁶ Hence, one could not justifiably interfere with another person's 'right not to be killed unjustly' since, if the killing was justified, then the killing would not be an interference with the right, as it is specified.

Thomson later changes her mind and provides two objections to Moral Specificationism. One objection is that Moral Specificationism can only provide explanations for why exceptions to rights are justifiable in a circular manner. She says,

For example, consider the case where Aggressor is driving a tank towards Victim in an attempt to kill Victim. May Victim use his anti-tank gun on Aggressor, thereby killing him? Suppose we were to answer: Victim may do so because Aggressor has no moral right not to be killed, but only the moral right not to be

⁵ Thomson (1986, 37).

⁶ Thomson (1971, 57).

killed unjustly, and in killing Aggressor Victim would not be acting unjustly. The answer is tantamount to claiming that it is permissible for Victim to kill Aggressor because it is not unjust – i.e., it is permissible for him to do so. Some explanation!⁷

William Parent and William Prior respond to this objection by claiming that Thomson is wrong to appeal only to the right, however it is specified, to justify Victim's action. For if we appealed only to a right to justify an action, we would run into the same sort of circularity with Moral Generalism: the answer to the question of why an interference was permissible would be that the interference was a justifiable interference – and that is no better an explanation! Parent and Prior conclude that the justification for any action does not lie in how the corresponding right is specified, but in *why* it is specified as it is. 'In every case the moral work of explanation will be borne by the goodness of the ends being sought and the appropriateness of the means chosen to realize those ends'.⁸

Though Parent and Prior's defense of moral specification against the circularity objection is satisfying, they are not so successful in defending Moral Specificationism against Thomson's second critique. Thomson points out that when we take an action that a Moral Specificationist would call a justifiable exception to someone else's right, we *owe* them something after the fact. That is, there is a residual debt left over after the act has been performed. Parent and Prior refer to this objection as the 'Compensation Objection'.

To motivate the objection, Thomson proposes a case in which I must break into your freezer and take the steak you keep there to save a child dying of protein deficiency. She points out that *after* I have taken your steak for this worthy purpose, I still owe you some compensation for what I have taken – that is, I owe you something along the lines of an explanation, some thanks, or an apology. Thomson believes that I would not have this remaining debt if I had not interfered with your right. Hence, she believes that I did interfere with your right when I stole your steak.⁹ Since the interference was justified, it was an infringement.

⁷ Thomson (1986, 37).

⁸ Parent and Prior, 844.

⁹ Thomson (1986, 40–41). Phillip Montague agrees with Thomson when he handles this particular case, but goes a step further and says that Moral Specificationism leaves us without any means of explaining the moral significance of the steak-stealer's thievery (Montague 1988, see ft. 3).

Now, Thomson is not saying that any time there is residual debt after a moral decision has been made that there must be an interference with rights. Instead, she seems to suggest that the residual debt, left over even after a justifiable action, provides us with *evidence* that there has been interference with a moral right. For this reason, Andrew Botterell characterizes Thomson's argument as an argument from the best explanation.¹⁰ How do we explain the residual debt in these cases of justified action if not with a rights infringement? Parent, Prior, and Oberdiek offer alternative suggestions, which I will address in turn. If their alternative suggestions fail to explain the moral residue then the Compensation Objection serves as a solid reason to favor Moral Generalism over Moral Specificationism.

Parent and Prior defend Moral Specificationism by saying that one can incorporate this justifiable compensation into the specification of the moral right:

If I break into your freezer and subsequently offer to compensate you for your loss, I act justly; if I break into your freezer and offer no compensation, I act unjustly (though this act is preferable to allowing the boy to die). According to [Moral Specificationism], what this shows is that your right not to have your freezer broken into unjustly includes the right to be offered compensation for such break-ins as are otherwise unjustifiable. Thus, according to [Moral Specificationism], you do have a right that would be violated if I broke into your freezer without compensating you for doing so: the right to be offered compensation for the break-in.¹¹

In other words, Parent and Prior claim that what Thomson considers to be a combination of an infringement of a right and residual debt is actually a violated right, and thus, the case is not a counterexample to the Moral Specificationist's claim that there are no justified interferences with rights.

Nevertheless, there is ambiguity in the passage in which Parent and Prior claim that there is a rights violation. Which specific right is violated? On one reading, the right that is violated is the original right to the security of the freezer, and that right is specified as follows:

¹⁰ Botterell, p. 280, 'A Defence of Infringement', *Law and Philosophy* (2007), doi: [10.1007/s10982-007-9018-2](https://doi.org/10.1007/s10982-007-9018-2).

¹¹ Parent and Prior, 839.

- (A) You have the right that no one breaks into your freezer unjustifiably, and to justifiably break into your freezer means, among other things, that one provides compensation.

Parent and Prior appear to endorse (A) when they write, 'your right not to have your freezer broken into unjustly includes the right to be offered compensation for such break-ins as are otherwise unjustifiable'. However, Parent and Prior follow this up by writing, 'you do have a right that would be violated if I broke into your freezer without compensating you for doing so: the right to be offered compensation for the break-in'. The latter claim suggests that the case involves two distinct rights:

- (B) i. You have the right that no one break into your freezer unjustifiably;
 ii. You have the right to be compensated after break-ins, even justifiable ones.

Let us first consider (A). Note that, in the event that I never think to compensate you for the steaks, I am in violation of the same right as is the thief who steals your steaks, not out of any need, but just because he thinks they will be tastier than the ones that are available for stealing at the local grocery store. That is, both the thief and I are in violation of the right that no one break into your freezer unjustifiably. The thief is in violation of this right because his reason for stealing the steaks is insufficiently weighty, whereas I am in violation of this right because, in the hubbub of saving the life of the child, I never thought to compensate you for your steaks.

A Moral Generalist like Thomson can account for the intuitive moral distinction between the thief's action and my own by holding that, although both acts are interferences with the same right, one is justified (even if it leaves some residual debt), and hence a mere infringement, and the other is not. On the other hand, if a Moral Specificationist accepts reading (A), the best she can say is that the same right was violated in both cases, but the reason for violation in one case came closer to serving as a justification for the action than the reason for violation in the other case, though both reasons were insufficient for justifying the action.

Thus, for the Moral Specificationist who accepts (A), there is a lot of justification information that goes unspecified by the right itself. If morally significant differences between the wrongness of distinct rights violations must still be explained outside of the specification of the rights, then Moral Specificationism begins to look impotent. Specifying the right along the lines of reading (A) leaves us few resources for explaining why there is a far greater moral difference between my action and the action of the greedy thief than there is between my action and the version of my action wherein I later compensate the steak-owner.

Moreover, the Moral Generalist's explanation better resembles what you would say if you came to me with a complaint about my behavior. Imagine that you show up at my door to discuss the steaks. I say: What? I shouldn't have stolen your steaks from your freezer to save the life of that child? You wouldn't say: Not if you weren't going to compensate me for them! You would instead say: No, no. Stealing the steaks from my freezer to save the life of the child was just what you should have done. But now that he is saved, perhaps you should pay me back for those stolen steaks.

Now recall the other reading of Parent and Prior's specification of the right:

- (B) i. You have the right that no one breaks into your freezer unjustifiably;
 ii. You have the right to be compensated after break-ins, even justifiable ones.

It is clear that (B) does not face the problems that (A) faces. After all, (B) is in itself capable of distinguishing my action from the action of the greedy thief. That is, the greedy thief violated (Bi) and (Bii), whereas I only violate (Bii).

The problem with using method (B) is that, in (B), moral specification isn't really doing any work at all. Instead of specifying the terms under which I may permissibly take your steaks without violating your right, and incorporating this specification into the right you have against others taking your steaks, version (B) of Moral Specificationism simply gives you an additional right. Thomson might be very happy to say that the 'residual debt' that she describes is a duty that corresponds to a claim, and Thomson thinks that any

claim is, by itself, a right.¹² Hence, (B) doesn't succeed in accommodating the case of the steaks using moral specification; it merely explains the situation by stipulating that there is *another* right generated by the events.¹³

As I have just demonstrated, Parent and Prior's response to the Compensation Objection fails because the only method it has for resolving the objection is a method that involves abandoning Moral Specificationism entirely. More recently, John Oberdiek has defended Moral Specificationism against the compensation argument. Oberdiek has two distinct defenses. First, he suggests that Moral Generalism is not necessary for explaining the moral residue that warrants compensation. He describes Thomson's original case in which one person kills another justifiably and then argues that we do not need to explain the residual debt by pointing to the infringement of a right; instead, he claims that we need only appeal to value pluralism.

Value pluralism allows that there are multiple permanent goods that provide us with moral reasons, but those reasons may be overridden by other weightier reasons. However, when such reasons are justifiably overridden, they do not cease to exist. There remains the sad fact that something of value was forsaken. Oberdiek can use value pluralism to offer an alternative explanation for the residual debt that Thomson holds to be evidence for Moral Generalism. There is a *pro tanto* reason not to take a person's life. Even when this reason is overridden by weightier moral considerations, there still remains the sad fact that something as valuable as a person's life was taken in the process, and if compensation is possible, it should be bestowed. Oberdiek says that this *pro tanto* reason that gets overridden need not be a moral right.¹⁴

The problem with this defense of Moral Specificationism is that it only applies to cases in which an individual is harmed or something valuable is forsaken. In the aforementioned car case, in which a homeless woman saves herself by spending a night in your unlocked car, assuming that she does not destroy or sully anything in the car,

¹² Judith Jarvis Thomson, *The Realm of Rights* (Cambridge: Harvard University Press, 1990).

¹³ In *The Realm of Rights* (1990), Thomson's Compensation Objection appears in a variety of forms. In the case that I've described, Thomson discusses residual debt. However, she is also concerned with cases of compensation for trespass, and for compensation required in breaches of contracts. I will not address whether Moral Specificationism can accommodate these cases. Even if it can, the residual debt case is still sufficient to show that Moral Specificationism is problematic.

¹⁴ Oberdiek (2004, 333).

there is nothing of value that has been forsaken, apart from your property right. There is moral residue in this case, but no *pro tanto* reason, besides a rights infringement, to explain that residue. Consider another example: what if I had promised you upon your departure to Australia that I would check on your house and grounds every year of your absence to make sure that your family's gravestones were not removed or desecrated. One year, due to health complications and family responsibilities, it would be extremely inconvenient for me to make a trip to your hometown. Let us say, for the sake of argument, that this omission is justified. Perhaps making the trip would involve a lot of pain, or missing final hours with a loved one, or missing my daughter's wedding, etc. I have broken my promise to you, and what is a promise but a transferred right?¹⁵ When I promised to make yearly check-ups on your house, you acquired the right against me refraining from making such check-ups. Yet, neither you nor your property was harmed in any way; nothing of value apart from the promise-keeping was forsaken. Imagine that when I make my next scheduled check-up, the grave stones are in perfect condition. There is no overridden thing of value in this case that is not itself a right. Popular versions of pluralism usually assign value to promise-keeping, but promises, when kept, simply are transferred rights honored. There is moral residue left over when one justifiably breaks a promise, but the only thing that can explain that residue in this case is an infringed right.

Of course, one might argue that on an interest-based theory of rights, something of value has been forsaken in both the gravestone case and the case in which the homeless woman sleeps for the night in your car. According to the interest theory, rights serve to protect especially important interests such that, if there is no interest, there can be no right. If you really do have a right against others entering your car, it is because you have an interest in others not entering your car. Therefore, the interest-based rights theorist could defend Oberdiek's account by saying: either there is no such right, or the

¹⁵ There are a variety of philosophical accounts about what it is that promises do. However, in this discussion, if we are to assume that a promise serves in the moral realm of rights as a contract serves in a legal realm of rights, then there is reason to think that promises transfer or generate rights. Thomson characterizes these transfers as the transfer of claims, which she takes to be rights (Thomson, 1990, p. 85).

right exists because of an interest. And if an interest is set back when the woman enters your car, then something of value *has* been forsaken.¹⁶

Yet, remember that we are trying to figure out how to explain this case and the apparent moral residue on a Specificationist picture. Since Specificationists do not believe in rights infringements, and since we are assuming that the homeless woman is justified in entering the car, there is no such right that you have against the woman entering your car, at least not on this special occasion, even if you have a more general interest in nobody entering your car. Of course, just because you do not have a right against the woman entering your car does not rule out the possibility that you have some interest in her not entering your car. Maybe you have an interest in having your car available to you at all times, no matter whether those times are ones in which you need or want to use it. Maybe you have an interest in having available all sorts of options that you will not select. For instance, we might also say that you have an interest in having the option to do a cartwheel at noon today, even though you will not desire or choose to do such a thing. Does your interest experience a set-back when the clock strikes 12:01 and you no longer have that option? This seems implausible, suggesting that you had no interest in having this unwanted option in the first place. (Though, you might have an interest in the mental experience of choosing between perceived options.) Of course, whether I am right will depend entirely on what is the correct theory of welfare and/or value theory. All that I mean to point out is that the interest-based theory of rights would need to be paired with a very particular theory of value or welfare to support Oberdiek's defense of Moral Specificationism.

Second, Oberdiek argues that Thomson's Moral Generalism does not leave room for a distinction between the compensation owed after rights infringements and the compensation owed after rights violations. If infringing upon a right and violating a right leave us with the same duty – to compensate – then the moral consequences of infringement and violation do not answer the vast moral difference between the two actions.¹⁷

¹⁶ I am grateful to John Oberdiek for this objection.

¹⁷ Oberdiek (2004, 335–336).

However, Thomson never says that the compensation owed after justifiably infringing a right is on a par with the compensation owed after violating that same right. Rather, she claims that a justifiable infringement leaves moral residue, and compensation is often needed to resolve that residue. However, because it is an unjustifiable interference, a rights violation might result in the violator acquiring duties beyond those that are compensatory. Botterell makes this point when responding to Oberdiek, suggesting that punishment or punitive damages might be fitting for a violator. Of course, Botterell is suggesting legal methods of dealing with violators. In the moral realm (when a violation of a moral right is not also the violation of a legal right) perhaps a violator might acquire a duty to the right-holder that is not only compensatory, but also redemptive. For instance, if I stole your steaks to save the child with protein deficiency, then I might only owe you some steaks. If I stole your steaks to impress my mother-in-law on her sudden visit, I would owe you quite a bit more, perhaps an offer to mow your lawn, certainly a very remorseful apology.¹⁸

So far, I have argued that Parent, Prior, and Oberdiek have not been wholly successful in their defense of Moral Specificationism against Thomson's Compensation Objection. However, Oberdiek has two additional arguments in favor of Moral Specificationism, and in opposition to Moral Generalism. First, he argues that Thomson inherits Robert Nozick's picture of rights, which is 'area in moral space around an individual'.¹⁹ Moral space, according to Oberdiek, is defined only by facts about the right holder, his claims, and his circumstances. Oberdiek thinks that any account of rights which subscribes to the moral space conception is defined by the idea of causing harm.²⁰ He writes, 'For if rights are defined strictly by reference to facts about the right holder, and thus without reference to the circumstances or what behavior by others is or could be justifiable, then what constitutes the

¹⁸ Oberdiek responds to Botterell's critique by saying, 'Right violations can of course constitute criminal wrongs, in which case the perpetrator is to be punished. But right violations are also clear civil wrongs, and the standard response to them in the law of torts is not punishment, nor punitive damages, nor stigmatization, but compensation' (Oberdiek, 2007, 305). It is not clear to me that this is a satisfying response to Botterell, as it seems that Botterell could simply say: rights violations, in virtue of being criminal wrongs, deserve punishment. However, more importantly, it is not clear how Oberdiek's response to Botterell could serve as a response to my suggestion of punishment and redemption in the moral realm.

¹⁹ Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974, p. 57).

²⁰ Oberdiek (2004, 345).

transgression of a right is behavior that *harms* and not necessarily behavior that *wrongs*.²¹

Yet, Oberdiek's critique involves a mischaracterization of the Generalist's rights infringements. Yes, the rights themselves, as well as the interferences with those rights, are defined in reference to the right-holder. (I take Oberdiek to mean 'interference' when he uses the word transgression here. That is, I take him to mean violations *and* what the Moral Generalist would call infringements – though he doesn't think the latter exist.) However, what constitutes the interference, whether justified or not, need not involve any harm at all. Consider the car case, in which the homeless woman spends the night in your car in order to survive the cold, or the case in which I fail to check up on your house while you are away, for justifiable reasons. In neither of these cases is the right-holder *harmed* in any way, and yet a Moral Generalist would say that, in both cases, a right has been infringed.²² Even when there is harm involved in incidents that are also rights infringements, the harm is not what renders the incident an infringement. This can be seen plainly in the following case: imagine that I promise to babysit Molly's ten year old child, Clancy, and do everything in my power to keep him from injury. However, during my stay, I look out the window and see a toddler standing alone in the middle of the busy street. I abandon Clancy for five minutes, reasoning that a ten year old in his home is better able to care for himself than a two year old in a busy street. I rush out, rescue the toddler, locate his parent, and return to Clancy. Low and behold, in the five minutes that I have left Clancy, he has burned himself on the wood stove, something I could have prevented if I had been with him. Now, the Moral Generalist would not say that I had infringed on any right held by Clancy.²³ Rather, she would say that I infringed on Molly's right, which was generated when I made my promise. Hence, the harm that has taken place is not even harm to the right-holder, and yet a right has been infringed.

²¹ Oberdiek (*L&P* 2008, 297).

²² This is true unless one subscribes to a theory of welfare that characterizes these incidents as ones of harm. Even if so, my subsequent point still holds.

²³ We will assume that 10 year olds do not have rights to total and constant protection from guardians. The only reason I have infringed on any right in this case is because I made a promise to Molly to be just this sort of obsessive guardian. However, even if Clancy does have a right that I infringed when I left him alone in the apartment for five minutes, that poses no problem for me. Clancy's right, if he has one, is not the right that I am discussing here. I am discussing Molly's right.

Perhaps, if interest-based rights theory is correct, then a Generalist would have to say that Molly has an interest in me honoring her right by devoting all of my care to Clancy, as I have promised to do. After all, when I infringe that right, I am infringing a right that is grounded in an important interest. It follows that this interest of Molly's is set back when I leave to rescue the toddler and, in this sense, she is harmed. However, if rights really are grounded in interests, and the set-back of interests constitutes harm, then it no longer is a problem for the Generalist view that rights transgressions are importantly linked to harm.

Second, Oberdiek argues that general rights are not 'fully moralized' rights.²⁴ His argument is as follows: either generalized rights are just a subset of *pro tanto* reasons in general, reasons that are not themselves grounded in moral considerations, or they are a different sort of reason entirely, in which case they have no normative bearing.²⁵ Oberdiek takes Thomson's position to fall under the second horn of the dilemma since she says that rights have 'an independent bearing in moral assessment of action'.²⁶

I will not investigate whether Oberdiek is correct regarding Thomson's account of the role of rights in moral assessment of action. Instead I will focus on the first horn of the alleged dilemma. Oberdiek says,

Instrumentalism about rights is the only defensible position. Rights depend on reasons and it is those underlying reasons that are normatively fundamental. The more basic considerations upon which rights are based are the justifications for rights, and as such, rights are not themselves normative bedrock, rather, practical reasons are. Crucially, however, this conclusion can be accommodated only by the specified conception of rights. For only the specified conception regards the reasons upon which rights are based as ultimate sources for justification. In contrast, rights according to the general conception purport to be justifications in themselves.²⁷

It is first worth noting that even if general rights are, themselves, justifications for right action, general rights might still be justified by other moral reasons. That is to say, just because they are not absolute reasons in favor of, or in opposition to, some all-things-considered right action, does not mean that they are 'normative

²⁴ Oberdiek (*OJLS* 2008, 128).

²⁵ *Ibid.*, 139.

²⁶ Thomson (1986, 70).

²⁷ Oberdiek (*OJLS* 2008, 133).

bedrock'. Oberdiek is opposed to rights, in themselves, *adding* anything to moral reasoning.²⁸ Yet, if rights can be infringed, this does not mean that they are adding an additional reason to our set of moral considerations. A right might be comprised entirely of justifications, whose source is practical reason. Like a lemma in an argument, a right might serve as both a premise (being a reason-giver) and a conclusion (being grounded in reason).

Of course, Oberdiek says that general rights serve as premises instead of as conclusions of arguments.²⁹ However, the only difference between general and specified rights, in this regard, is that specified rights are moral conclusions of the form 'It is permissible to x' or 'It is not permissible to x'. That is, if doing x would infringe someone's right, then we know that x is impermissible. General rights are moral conclusions of the form 'It is permissible to x' or 'It is impermissible to x, unless y holds'. We do not know in virtue of x being a rights infringement that it is impermissible. However, disjunctive conclusions to moral arguments are no less conclusions.

So far, I have provided a rebuttal against Parent, Prior, and Oberdiek's defenses of Moral Specificationism from the Compensation Objection. I have also defended Moral Generalism against Oberdiek's critique.³⁰ Must we agree with Thomson and say that Moral Specificationism fails? I will eventually argue that, no, there are some reasons for which we should not abandon Moral Specificationism completely. In what follows, I will re-describe the debate over moral specification using Hohfeld's terminology designed for discussing legal rights.³¹ Then, I will use this framework for rights to propose what I call the Restricted Account of the moral specification of rights. I will argue that the Restricted Account is preferable to both Moral Specificationism and Moral Generalism. Finally, I will explain why the Restricted Account is capable of accommodating the

²⁸ Joseph Raz, *The Morality of Freedom*, 11, 33 (New York: Oxford University Press, 1986).

²⁹ Oberdiek (2004, 339–340).

³⁰ Oberdiek offers a final argument that attempts to explain the widespread and, in his view, faulty acceptance of the general conception of rights (*OJLS* 2008, 130). I do not attempt to respond to this error theoretic argument in this work.

³¹ I am not the first to implement Hohfeldian rights language to answer questions about moral specification. Andrew Botterell (see above) argues that justifiable infringements are exercises of privileges. He suggests that a right holder might not have a claim against the exercise of a privilege, but might still have a claim for compensation. As you will see, my Hohfeldian application borrows nothing from this account.

Compensation Objection, but also has virtues that should please Moral Specificationists such as Parent, Prior, and Oberdiek.

II. MORAL SPECIFICATION AND THE FORM AND FUNCTION OF RIGHTS

Hohfeld introduced a framework for describing the internal structure of legal rights.³² According to Hohfeld, a legal right is comprised of particular normative advantages that spell out both the meaning of the right and the relationship the right bears to the rights and responsibilities of others.³³

The framework includes four different advantages that someone might hold in virtue of having a right: a claim, a privilege, an immunity, and a power. These advantages each correspond to some disadvantage, or lack of advantage, held by others, or held by some particular other.³⁴ For instance, Leigh might have a claim against George using, damaging, or stealing her car. If this is the case, then George has a corresponding duty not to use, damage, or steal Leigh's car. This is true legally. However, Leif Wenar's modified account of Hohfeld's framework allows this relationship to explain the moral fact of the matter as well. George would be acting counter to his duty, and he would be infringing Leigh's claim, if he struck her car with a baseball bat or drove off with it into the sunset (unless, of course, he had Leigh's permission to do either of these things). In these ways, a claim can function to protect a right-holder from the actions of others.

Another Hohfeldian advantage is called a privilege. Leigh might have a privilege to walk on George's sidewalk, even though she does not have the privilege to walk other places on his property. If she has this privilege, then no one else, including George, has a claim against her walking on his sidewalk. Hohfeld uses the word 'privilege' to mean anything that one has no duty to refrain from doing.

The next normative advantage within the framework is an *immunity*. If Leigh has complete immunity, then no one besides Leigh and no set of circumstances can alter the claim that she has to her car. Now, you can imagine a state of affairs in which Leigh does

³² Hohfeld, Wesley Newcomb, *Fundamental Legal Conceptions* (New Haven: Yale University Press, 1923).

³³ Leif Wenar, 'The Nature of Rights', *Philosophy and Public Affairs*. Vol. 33, No. 3 and Judith Jarvis Thomson, *The Realm of Rights* (Cambridge: Harvard University Press, 1990).

³⁴ *Ibid.*, 229.

not have this *legal* immunity. For instance, if Leigh lived in a country in which the leader of the country had legal discretion to take away cars from some people and give them to others, then Leigh would not have this immunity. Hohfeld calls the lack of such immunity a vulnerability. Someone whose claims are vulnerable does not have protection against those claims being taken away. An immunity or vulnerability in the moral realm of rights would function in the same way. Leigh's moral right against having her rights-relationship to others with respect to her car altered is immune if she is the only party who can decide whether that particular rights-relationship will change (e.g., by selling or giving away the right to the car). If it turns out that her claim to the security of her car ceases to exist, despite her own wishes, when a homeless person requires the car as shelter on a cold night, then her moral right is not immune; it is vulnerable.

The final normative advantage within the framework is a *power*. Someone has power over his or her right when he or she can voluntarily alter that right. For instance, if Leigh wishes to sell George her car, she has the power to do so. After the sale, the claim that once belonged to Leigh will then belong to George. Leigh can also relinquish the right to her car by abandoning it in the middle of a desert. In both of these cases, Leigh releases *herself* from having a claim against another not to use, harm, or steal her car.

What do claims, privileges, immunities, and powers have to do with rights? These normative advantages are what comprise rights. They needn't *all* be present in order to comprise a right. Now, at times throughout the remainder of the paper I will describe rights as being, in part, comprised of vulnerabilities. Of course, vulnerabilities are just the lack of immunities, holes in the bundle of normative advantages. For this reason, I recognize that the word 'comprise' is not ideal. So, I will just stipulate here: a right being comprised, in part, of a vulnerability simply means that there is a lack of a particular immunity within that bundle.

What combination of normative advantages is present is called the form of rights. The form of rights is an answer to the question: what does it mean to have the right to X? Thomson believes that any normative advantage, be it a privilege, an immunity, a claim, or a power, constitutes a right in and of itself.³⁵ Nevertheless, we can

³⁵ Thomson allows all normative advantages to be called rights (Thomson, 1990, 59). However, she does refer to 'cluster-rights' which are combination of these various rights (37–60).

envision other, more restrictive accounts of the form of rights. Two such accounts fall, respectively, out of two traditional theories of the function of rights, namely, will theory and interest-based rights theory. Will theorists believe that the function of rights is to protect the autonomy and choices of the right holder. Interest-based rights theorists contend that rights function to protect the interests of the right holder. Here is a brief account of the distinction between will theory and interest-based right theory as described by L.W. Sumner (who discusses the functions of both moral and legal rights):

The interest conception treats rights as devices for promoting individual welfare. Thus the dominating image here is of a right-holder as the passive beneficiary of a network of protected and supportive duties shared by others, from which it follows that a being can be a right-holder only if it possesses interests. On the other hand, the choice conception treats rights as devices for promoting freedom or autonomy. Thus the dominating image here is of the right-holder as the active manager of a network of normative relations connecting her to others...³⁶

Each of these accounts of the *function* of rights fits, respectively, with a different conception of the form of rights. First, since will theorists think that discretion is such an important aspect of the function of rights, such theorists might be hesitant to allow that bundles of Hohfeldian advantages that do not bestow discretion or authority are rights at all. For instance, if I had been given a car by my parents on the condition that (1) I never sold it or gave it away (hence, no power); (2) I used it never at my own discretion, but only when they told me to do so (no privilege); and (3) that they could take it back if they wanted to do so (no immunity), then a will-theorist might say that I had no true right to the car, *even if* I had a claim against others stealing the car.³⁷ On the other hand, interest-based theories of rights contend that the purpose of rights is to protect individual interests, all things considered. While they would be content to call my powerless claim to the gifted car a right, they would be hesitant to call a package of normative advantages a right if it does not protect the holder or provide some benefit to the holder.³⁸ For instance, if I was blind and

³⁶ L. W. Sumner, *The Moral Foundations of Rights* (Oxford: Clarendon Press, 1997, 47).

³⁷ Do keep in mind that I am suggesting nothing regarding whether any theory would call such a right an ownership right.

³⁸ Please note that I am not discussing *ownership* rights here. Both will theorists and interest based rights theorists might be hesitant to say that I had full ownership rights to this car.

could not drive, and had no one to chauffeur me, but owned a car and, further, had the power to give it away, but not to sell it for money, then an interest-based rights theorist might not call this particular bundle of normative advantages a right, even if, recognizing my power to give away the car as I please, the will-theorist would say I had a right.

Leif Wenar proposes what he calls the ‘Several Functions Theory’, which is more demanding in terms of what bundle of normative advantages constitutes a right than Thomson’s account, but considerably more lenient than either of the traditional accounts. This theory states that any bundle of normative advantages that serves to promote exception, discretion, authority, protection, provision, or performance for the holder counts as a right.³⁹ He sees his account of the functions of rights as pulling what is best from both of the traditional theories.

I will not advocate any particular theory of the form or function of rights here. I have briefly described a few views so that I can later refer to them when I explain the method by which we can determine the degree to which a right is specified, and why Thomson’s view regarding the form of rights is particularly ill-suited for accommodating the specification of rights.

Let us reexamine the case that I described in my introduction. You have a right that no other person enters your car uninvited. The homeless woman justifiably enters your car on a wind-chilled night in order to survive through the coldest of temperatures. The question at hand: Did she infringe your right, or did you never have a right against others saving their own lives by entering your car? That is, is your right against others entering your car specified in such a way that the right does not apply in certain cases? Here I propose that this set of questions can be described in Hohfeldian terminology as well.

An exception that is specified within a right is really a kind of vulnerability. This may seem surprising at first blush. After all, vulnerabilities render right-holders subject to non-voluntary changes in their existing rights-relationships, whereas specified rights would seem to characterize normative advantages of the right-holder at all times, before and after the exceptional incident. For example,

³⁹ Wenar, 246.

according to Moral Specificationism, the homeless woman's perilous situation does not alter your rights-relationship with your car. Instead, the homeless woman may permissibly sleep in your car because you never had a right against her doing such a thing to save her life.⁴⁰ However, Hohfeldian vulnerabilities are spelled out ahead of time as well, even in the legal realm. I have a right to keep my property and never sell it, unless the government needs to build a road through my land. My current claim is therefore vulnerable to the government and to that set of circumstances, should it arise. That vulnerability explains the nature of my right from the very beginning. The specific circumstances that set the government's exercise of my vulnerability in motion do not produce the vulnerability. They do, however, result in my no longer having a claim to my property, and thus change my rights relations.

Thus, exceptions, according to a moral specificationist's account, and vulnerabilities, which are described by a right's lack of certain types of immunity, are, in essence, clauses that allow other agents to permissibly do what they ordinarily have a duty to refrain from doing (or vice versa, e.g., they might allow other agents to refrain from doing what they ordinarily have a duty to do). The clauses themselves simply spell out the conditions under which these exceptions could arise.

So, we can ask: Does your moral right against others entering your car consist in a claim *and* an immunity against that claim's being altered? Alternatively, does that right consist in a claim but *no* immunity but, instead, a vulnerability to being altered by other people and their circumstances? If the former is true, then you have an immunity against the alteration of the claim you have against others entering your car. This means that when the homeless woman enters your car, however justified she might be, she still infringes on your right. However, if the latter is the case, and this immunity is not a part of the right, then the right itself specifies that the homeless woman may save herself by entering your car uninvited. Of course, if it is specified by the right itself that she may

⁴⁰ Note that Shafer Landau does not even think that these justified exceptions need to be spelled out as specifically as they are here. He says, 'It seems that Thomson is envisioning a specificationist program in which rights principles incorporate exceptive clauses so detailed that they will sometimes, perhaps often, incorporate definite descriptions, reference to unique circumstances, proper names, etc. They would be indefinitely long disjunctions of correct conclusory moral judgments. But the specificationist might instead insist that the relevant exceptive clauses be relatively few in number and couched in terms of repeatably instantiable *kinds* of exceptions' (212, citation in ft. 2).

do this then she does not infringe upon the right. Hence, we can refer to the debate about the specification of rights by discussing the immunities comprising particular rights.

Recall that Thomson's own view about the form of rights is that *any* Hohfeldian normative advantage counts as a right. That means that if you have a claim against others entering your car, an immunity against others changing this rights relationship, and a power to sell this claim, then you have three separate rights. If these are three separate rights, then it is not the case that a particular right is *comprised* of a claim, a power, and either an immunity or the lack of an immunity. However, we need rights to be comprised of immunities or vulnerabilities in order to be capable of specifying the conditions under which others may ignore a claim. After all, what it means for your right against others entering your car to be specified in such a way that the homeless woman may enter your car to save her life is simply that your right contains a particular kind of vulnerability. For this reason, Thomson's view regarding the form of rights is actually incompatible with the moral specification of rights. On the other hand, both of the traditional theories, as well as Wenar's Several Functions Theory, stipulate that rights are bundles of normative advantages that either do or do not include particular immunities, and when they do not include any particular immunity, the right is vulnerable in that respect. In this way, the traditional theories and Wenar's theory are accounts of specifiable rights.

III. THE RESTRICTED ACCOUNT

The conclusion of the last section was that rights are specified if they are comprised of certain vulnerabilities. So, how can we determine whether or not certain vulnerabilities should be part of the Hohfeldian bundle of normative advantages that comprise a right? In this section I will propose a theory called the *Restricted Account* of the moral specification of rights. I will explain the reasoning that justifies this theory, and then I will explain why the Restricted Account should satisfy Moral Specificationists like Parent and Prior as well as Moral Generalists like Thomson.

The Restricted Account holds that if the role of rights within a broader ethical theory is also what justifies the exception to a particular right, then that exception should be built into the right itself;

however, if the exception to the right is justified by a moral consideration that is unrelated to the role that rights play within the ethical theory, then that exception is an infringement of the right. The reasoning behind the Restricted Account is this. Rights have a job: they promote, protect, enhance, or secure *something* for the right-holder. From here on out I will refer to this promotion, protection, securing, and enhancing as different methods of ‘advancing’. Now, first, if the very purpose of rights is the advancement of something, S, and a particular exception to a right advances S, then the right itself *best* advances S by including the exception; that is, it includes a vulnerability. However, if the exception to honoring the right is justified by some other moral consideration that has nothing to do with the role that rights play within the ethical theory, then the role and purpose of rights are *not* best served by these exceptions, even if the exceptions are justified. That is, when I am considering how rights should be formed with the view of satisfying a particular role that rights play within the broader ethical theory, I have no reason to include exceptions that do not serve that role.

Throughout Section 3 I will be illustrating my premises with examples. For each example, I will first stipulate assumptions about what ethical theory is true and what functional account of rights is true, just for the sake of explaining how these theories, when combined with the Restricted Account, would explain particular cases. The Restricted Account is not tied to any ethical theory or to any account of the function of rights. However, on the Restricted Account, whichever ethical theory and account of the function of rights that turn out to be true will yield different results about the specification of particular rights. I will say more about these results in Section 4. I devote Section 3 to my argument in support of the account. But first, why was Section 2 important?

The reason why it helps my view to couch the moral specification of rights in terms of Hohfeldian vulnerabilities and immunities is that there is already an established relationship between the form of rights and the function of rights. Recall from Section 2 that different accounts of the form of rights fall naturally out of different accounts of the function of rights. Thus, by describing moral specification as an aspect of the form of rights, it is easier to establish a connection between moral specification and the function of rights.

In cases in which we deliberate about whether an action is justified because of the specification of rights or because of a competing value promoted by the ethical theory, we typically already know that the action is justified. Hence, I am not asking the functional theory to provide normative input when determining the form of rights. The functional theory merely picks out those bundles of normative advantages that *are* rights, not what normative advantages an agent actually holds.

Rights advance a value, *S*, only by affording individuals packages of normative advantages that advance *S*. So, if the role of rights within an ethical theory is to advance *S*, then rights advance *S* only by affording individuals packages of normative advantages that advance *S*. This should not, by itself, be surprising; it follows from the conclusions of Section 2. However, in order for the Restricted Account to work, I need to say something stronger, namely: *Rights are comprised of the bundles of normative advantages that advance S (the ‘something’ served by rights within the ethical theory) to the fullest extent required by the ethical theory, and no other non-rights aspect of an ethical theory serves the same role.* I will call this the Principle of Bundle Selection, or PBS.

For instance, if it turns out that the true function of rights is to advance the interests of the right-holder, then any particular right that an individual has to, say, her banana, will be one that includes the set of normative advantages best suited for protecting the interests of the individual. Now, if the individual’s banana is poisonous, and I know this information and the individual does not know it, and we don’t speak the same language, so I cannot inform the individual about the poison in her banana, then my justification for taking the banana stems from the right-holder’s own interests. Because the right-holder’s interests are what rights function to advance, given our initial assumption in the example, PBS requires that the right be specified to capture *all* of the moral considerations that relate to the interests of the right-holder. So, I do not infringe the individual’s right when I take the banana in this case, nor in any case in which my justification for stealing the banana is the interests of the individual herself. Instead, her right includes a vulnerability to such circumstances arising in which stealing the banana is in the best interests of the right-holder. If PBS is true, and since we are assuming for the sake of this example that the interest-based account of the

function of rights is true, then there will never be an incident of infringement *for the sake of* the right-holder's own interests. That is, no moral consideration within the ethical theory besides rights will do any of the work to protect the interests of the individual. So, there will never be a case in which we find that we have a non-rights consideration of the right-holder's own interests.

Assume for the moment that PBS is true. If so, then the Restricted Account of the moral specification of rights follows. The moral specification of rights simply means the existence of particular immunities and/or vulnerabilities within the bundles of normative advantages that comprise rights. If an action that appears to be at odds with a right, regardless of who performs it, is morally justified because it advances the same value, S, that the function of rights is to advance, then it is justified because the right-holder holds a bundle of normative advantages that justify the action. So, if the action is justified because it advances S, then it is justified due to the moral specification of rights.

What if the same action is morally justified, but not because it advances S? In this case, the agent does not hold a package of normative advantages that justify the action. So, if that action is justified, but not because it advances S, then it is not justified due to the moral specification of rights but by some other aspect of the ethical theory. For instance, I might be justified in taking the banana from the individual without her permission to give to a diabetic child who is about to have a seizure (a different, non-poisonous banana, that is). The moral consideration at hand here is someone else's interests, not the right holder's. The justification is a different type of moral consideration than that which is advanced by the function of rights. PBS allows that another aspect of an ethical theory, if one exists, can supply moral considerations that are different from those advanced by rights. So, in this example, assuming that my theft is justified, it would follow that I am infringing the individual's right to her banana.

But why in the world should we accept PBS? That is, why should rights be comprised of the bundles of normative advantages that advance S (the 'something' served by rights within the ethical theory) to the fullest extent required by the ethical theory? And why must no other aspect of an ethical theory serve the same role? To see

why, suppose now, for the sake of demonstration, that will-theory is the correct account of the function of rights, and imagine that you have a right against others entering your car. Here are some possible normative advantages that could comprise your right:

- (1) A *claim* against others entering your car. (Others have no privilege to enter your car.)
- (2) A *power* to sell or waive your claim against others entering your car.
- (3) An *immunity* against anyone or anything other than you changing your claim for any reason.
- (4) An *immunity** against anyone or anything other than you changing your claim for any reason except for the promotion or protection of your own will.

Bundle A: Claim, Immunity

Bundle B: Claim, Power, Immunity

Bundle C: Claim, Power, Immunity*.

No matter which bundle is chosen, the justification for entry into your car stays the same. However, when the justifying facts are not included in the bundle that comprises the right, they are picked up by other components of the ethical theory. Will theory eliminates Bundle A, because it is not a right according to that theory, since it does not provide the right-holder any choice or discretion (and we are assuming that you have a right). But why prefer C to B? After all, to different degrees, both function to protect the will/choices of the right-holder. Where B fails to advance autonomy to the extent it needs to be advanced, other autonomy advancing components of the ethical theory can pick up the slack and, occasionally, override the right.

But if, within a theory, rights are assigned a particular function, then rights should take a form that allows them to perform that function to the fullest extent. If rights, in one form, could function to advance S to extent N, and if an ethical theory required that S be promoted to N, why would the theory endorse an alternative form of rights that allowed them to promote S only to N-minus-some extent? The remaining promotion of S required by the ethical theory would have to be done by some other aspect of the theory, a complication added for no apparent reason.

For instance, imagine, still, that will-theory is true, but that Anna's right to her car is equal to Bundle B. Ben is Anna's neighbor

and sees that Anna's car is parked on the street in a place where water is building up in a huge puddle during a long downpour. Yes, Anna's will is advanced to some degree by Bundle B, in that it is her will that her car not be broken into. After all, she is awfully fond of her car. However, Anna would also choose, if she could, to have the car moved to safe land, as it stands to be destroyed by the growing puddle. Let us say, for the sake of this example, that this car is only one of many of Anna's cars, so nobody's wellbeing rests in the balance. So, the only justification that Ben has for moving the car to safety is that this action would be in line with Anna's will. However, Ben cannot get Anna on the phone in order that she can waive her right to her car not being broken into. She is in a meeting. If Bundle B characterizes Anna's right, then Ben infringes on the right by breaking into the car and saving it. Assuming his action is justified, his justification is Anna's will. This means that some moral consideration apart from rights is functioning to advance Anna's will. That is, the right is serving Anna's will in one way, and another moral feature is serving Anna's will in another way.

Then, denying PBS results in a troublesome consequence: the function of a right will sometimes *best* be promoted by being overridden. Not only is this a consequence of denying PBS, it is also a consequence of relinquishing all moral specification, as Thomson would like us to do. But other accounts of the function of rights such as will theory, interest-based rights theory, and Wenar's theory say that bundles of normative advantages are rights only if they serve to promote some function S. (Recall that this is why will theory can say that claims that are not attached to any discretionary powers are not truly rights.) A right is not *servicing* in any sense of the word, or doing any sort of S-advancing, when it is being morally overridden. In fact, in these instances, if the right *was* being respected, or was doing its job of constraining someone's actions, it would be demoting that which it functions to advance. That is, if Ben refrained from moving Anna's car, even though she would have chosen for him to move it, on the grounds that he would be interfering with her right, then her right, comprised of Bundle B, would actually be serving to demote Anna's will. Hence, it could not even count as a right, according to its functional explanation within the ethical theory, since it doesn't advance S. This concludes my defense of the *Principle of Bundle*

Selection, which must be satisfactory in order for my argument to be sound.⁴¹

The Restricted Account would satisfy Thomson in so far as it can account for cases of residual debt. The account should also go some distance in satisfying Parent and Prior, for a reason I will describe at the end of this section.

Consider these cases:

Case 1: I am at a gas station and see that Person A is badly injured and needs medical attention. Person B, who has left his phone on top of his car, is away in the bathroom. Having no phone of my own, I use Person's B's phone to call 911.

Case 2: I am at a gas station and see that Person A is badly injured and needs medical attention. Person B has fainted at the sight of Person A's injury. However, I see that Person B has typed in 911 on his phone before fainting, but fainted before he could press 'call'. I pick up his phone and press 'call'.

Imagine that a version of ethical pluralism is true such that autonomy and choice and true respect for persons requires a strict set of rights, but that human welfare needs to be promoted as best as possible.⁴² Now, assuming all of this, let me explain what takes place in the above two scenarios, given the Restricted Account.

Person B's right against others using his phone uninvited plays the role in my ethical theory of protecting Person B's choice and autonomy. In Case 1, when I use Person B's phone, I am justified not by considerations of B's choice and autonomy, but by considerations of A's welfare. However, in Case 2, when I use Person B's phone, I am justified not only by considerations of A's welfare, but also by B's choice, as he made the decision to call 911 before he fainted. Therefore, I would characterize my action in Case 1 as an infringement of B's right against others using his phone uninvited. However, in Case 2, B's right against others using his phone uninvited is comprised of a vulnerability such that it is all right to use the phone uninvited in such cases where one is effecting the choice that B has already made regarding the use of his phone. That is, B's right

⁴¹ See Appendix for the bi-conditional proof for the Restricted Account, which might be useful for the reader who is not convinced that the Restricted Account follows from premises that I have here defended.

⁴² Note that even Robert Nozick, who considers rights to be side constraints on the pursuit of good ends, not easily overridden by other moral considerations, believed that rights could be justifiably infringed in cases in which outright catastrophe could be stopped by the infringement. (Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974, p. 29.)

is specified to exclude all exceptions that are justified by considerations of B's autonomy. The exception that is justified merely by A's welfare does not serve to promote the role of rights that justifies B's right against others using his phone. That exception is justified by another and, in this case, an overriding moral consideration.

This view should satisfy Thomson because it addresses her worries about the residual debt, or need for compensation, that is left over when one infringes on a right. There should be no such residual debt left over when an exception is specified by the right in the first place. That is, in Case 1 in which I justifiably infringe on B's right, I probably should give B some pocket change or a dollar when he returns from the bathroom to make up for the used minutes. At the very least, I owe him an explanation and a thank you for the use of his phone. Whereas, in Case 2, since I simply make the call that Person B himself chose to make, I owe B no such thanks or compensation. Hence, there is no residual debt in the case where the exception to the right is specified. After all, if the correct ethical theory uses rights to advance autonomy and choice, then an exception to a right that advances the right-holder's autonomy and choice is not one that leaves behind any residual debt.

The Restricted Account of the moral specification of rights should also resolve Parent and Prior's one stated argument in favor of Moral Specificationism. They say:

In addition, [Moral Specificationism] allows us to avoid the odd and paradoxical idea that one can have a moral right against others that they not perform morally permissible and justifiable actions. Thomson is stuck with this unattractive position as a corollary of her compensation argument.⁴³

This circumstance is only paradoxical if the same justification for the right is also the justification for the infringement of the right. It is not paradoxical to say that X has a right against Y z-ing due to justification J, but Y ought to commence in z-ing due to an overriding moral consideration unrelated to J.

IV. APPLICATIONS

Throughout this work I have examined the Restricted Account in terms of will theory and interest-based rights theory. However, if

⁴³ Parent and Prior, 843.

some other account of the function of rights is the correct one, then the Restricted Account will have different results. For instance, if Wenar is correct, and there are several functions of rights, including protection of right-holders, enhancing the discretion of right-holders, provision for right-holders, etc., then there will be more justification for behavior that needs to be specified directly into the rights themselves.

On some ethical views, complete specification will be consistent with the Restricted Account. For instance, if hedonist utilitarianism is the correct moral theory, then if there are rights at all, their justification will be the same as the justification for every permissible action – the promotion of happiness. So, on this view, every exception will be specified into the normative advantages comprising the right.

Throughout this discussion, I have treated justification in a rather simple way. What happens when there are two independent considerations that are each sufficient for justifying an action that appears to be at odds with a right, but only one of these considerations also justifies the right, itself? My response is that any consideration that justifies both the right and its exception is specified within the right. So, imagine that will-theory is true within an ethical theory that also involves broad welfare considerations. Consider a case in which I take your keys from you when you are drunk, despite your protests, because I know that, when sober, this is what you would choose for me to do. Your property rights to your keys are justified because they advance your autonomy/choice, and my theft of your keys advances your autonomy/choice. Hence, the right is specified, *even if* my motivation for withholding the keys is your or other people's welfare, and even if that welfare provides another sufficient justification for the theft. That is, despite my motivation, and despite the existence of a second sufficient justification, your right has not been infringed, and so there is no residual debt that I owe you.

What happens when there are two independent considerations that are only *jointly* sufficient to justify an action that appears to be at odds with a right, but only one of these justifications is the same as the justification for rights within the ethical theory? This is a little harder. Imagine now that I have taken your keys, but in this case,

I have not taken them because you are drunk, but because you are sleepy. I cannot quite tell if it would be safe for you to drive home. Additionally, I am not positive that, if you had the chance to consider this situation ahead of time, you would have wanted me to steal your keys. However, I think there is a good chance that you would have wanted me to do so. This being the case, autonomy considerations are not sufficient for justifying my theft of your car keys (I shouldn't steal them if I'm confident that you and other drivers will be okay), and neither are welfare considerations (I shouldn't steal the keys if I know for sure that you wouldn't want me to do so). Let us say that in this case it is only the combination of your autonomy considerations with the welfare considerations that amounts to a sufficient justification for stealing your keys.

What I will say about this case is simply this: *if* the action advances the value that is also the function of rights *more* than that same value would be advanced by inaction (that is, by the normal exercising of the right) then it is specified. It is, of course, hard to tell if your autonomy has truly been advanced by my theft in this particular case. However, this confusion is appropriate. After all, if we were actually in this situation, I had justifiably stolen your keys, you had been perfectly sober, though sleepy, and had been forced to stay at my house for the night, then I might very well be unsure about whether I owed you something, an apology, etc. Our account of the specification of rights should not give us answers about how our actions are justified. Those are details to plug into the account, not details to extract from it.

V. CONCLUDING REMARKS

In this paper I have done three things. First, I have defended one of Thomson's original objections to Moral Specificationism against the response provided by Parent and Prior. Second, I have explained how the debate over the moral specification of rights can be explained in Hohfeldian terminology, which allows us to tackle the question of moral specification by asking under what circumstances a vulnerability is built into the composition of a right. Third, I have introduced a position called the Restricted Account of the moral specification of rights, wherein I explain how certain exceptions to rights should be specified as vulnerabilities of the rights themselves,

and certain other exceptions to rights are justified by other moral considerations unrelated to rights, and should be explained as infringements of those rights.

Parent and Prior suggest that there is an important link between the moral specification of rights and the inviolability of persons.

Finally, moral rights as conceived under [Moral Specificationism] and their constitutive role in defining our moral identity as inviolable creatures furnishes us with a perspicacious explanation of John Rawls' well-known but obscure idea that persons possess an inviolability founded on justice that even the welfare of society as a whole cannot override.⁴⁴

This alleged virtue of the complete Moral Specification of Rights is unfounded. No matter what view we hold regarding the moral specification of rights, whether it is complete, restricted, or against any specification, most of us believe that there are certain justifiable exceptions to honoring certain claims that we ordinarily hold against each other. Whether these exceptions are built into the right or not has interesting consequences regarding the form of rights and how those rights function in an ethical theory. However, the inviolability and proper treatment of persons does not hinge on the outcome. After all, the Moral Generalist and the advocate of the Restricted Account could each say that there are some rights for which there are no justifiable interferences. It is no harder to deny the possibility of infringements for a particular right than it is to deny vulnerabilities, as specified within the right. Therefore, allowing some infringements of rights does not itself render persons violable.

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⁴⁴ *Ibid.*, 845 Here Parent and Prior refer to John Rawls' *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971, 3).

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VI. APPENDIX: ARGUMENT FOR THE RESTRICTED ACCOUNT
OF MORAL SPECIFICATIONISM

T = Broader ethical theory

R = Right

S = Something (which will be *advanced*, meaning protected, promoted, secured, enhanced, etc.)

E = An exception

1. Within T, the function of R, is to advance S, and, additionally, within T, S justifies E to that R. (provisional assumption for conditional proof)
2. In T, the function of R is to advance S (from 1)
3. If the function of R is to advance S, then R is comprised of normative advantages that advance S. (Hohfeldian-application, conclusion of Section 2)
4. In T, R is comprised of normative advantages that advance S. (from 2, 3)
5. In T, S justifies E. (from 1)
6. If, in T, R is comprised of normative advantages that advance S, and S justifies E, then, in T, R is comprised of normative advantages allowing for E. (from PBS, which is defended in Section 3)
7. In T, R is comprised of normative advantages that allow for E. (from 4, 5, 6)
8. R is comprised of normative advantages that allow for E iff E is morally specified in R (Hohfeldian-application, conclusion of Section 2)
9. Then, in T, E is morally specified in R. (from 7, 8)
10. Therefore, if, in T, the function of R is advancing S, and, additionally, in T, S justifies an exception E to R, then, within T, E is morally specified in R (1 through 9 conditional proof).
11. Within T, E is morally specified in R. (provisional assumption for conditional proof)
12. In T, R is comprised of normative advantages that allow for E iff in T, E is morally specified in R (Hohfeldian-application, conclusion of Section 2)
13. In T, R is comprised of normative advantages that allow for E. (from 11, 12)
14. If, in T, R is comprised of normative advantages that allow for E, then, in T, E is justified by advancing S and the function of R is to advance S (from PBS, which is defended in Section 3).

15. Then, in T, E is justified by advancing some S, and the function of R is to advance S. (from 13, 14)
16. Therefore, within T, if E is morally specified in R, then, within T, the function of rights is to advance S and advancing S justifies E. (11 through 15 conditional proof)
17. (**The Restricted Account**) Within a broader ethical theory, the function of a right is to advance something and, additionally, within that theory, that same thing justifies an exception to the right IFF the exception is morally specified in the right. (from 10, 16)

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