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In the following, I will discuss the aims and methods of the research that I wish to propose for my doctoral dissertation. The purpose of this research is to examine philosophical treatments of the concept of suberogation, and to develop an argument for this concept's rightful place in the lexicon of moral evaluation.

In a 1964 article entitled “Supererogation and Offence: A Conceptual Scheme for Ethics”, Roderick Chisholm poses a question that I find to be highly intriguing. After discussing the intuitively plausible notion of supererogation (which he very roughly takes to cover those acts that are good to perform, but not morally required), Chisholm wonders whether there might not be an “opposite” category of moral evaluation. While of any given supererogatory act x we might feel comfortable saying, “You ought to x , but you don’t have to x ”, Chisholm asks if we can ever coherently say, “You ought not to x , but you may x .”¹ Chisholm goes on to argue that our classification of moral evaluations should include a category for acts that he calls “offences,” comprised of “permissive ill-doing”². His suggestion has not been widely adopted in the subsequent ethical literature, and the concept of suberogation (a term used by Julia Driver³ that is interchangeable with Chisholm’s “offence”) remains largely unrecognized.

A number of difficulties arise when considering the possibility of suberogation, which may account for the lack of discussion it seems to have generated in the philosophical community. The few authors who have championed suberogation since Chisholm have

¹ R. Chisholm, “Supererogation and Offence: A Conceptual Scheme for Ethics”. *Ratio* vol. v, no. 1 (1963) pp. 5

² *ibid.*

³ J. Driver, “The Suberogatory”. *Australasian Journal of Philosophy*. Vol. 70, no.3 (September 1992). pp. 286-295. I shall use both “moral offence” and “suberogation” throughout my discussion.

considered some of these difficulties, but I believe that their accounts of the problems are often incomplete or unsatisfactory. This is not to say, however, that I that these problems *cannot* be adequately addressed. On the contrary, in the dissertation that I propose to write, I aim to show that Chisholm's question should be answered in the affirmative; I believe that a theory of moral evaluation should countenance suberogatory acts.

Moreover, I think that the careful study of suberogation may yield some considerable philosophical contributions, and as such is deserving of a full-fledged dissertation. It is not unusual in everyday discussions of moral life to hear individuals refer to the elusive "gray areas" of moral evaluation; intuitions surrounding these gray areas are in fact what draw many students to moral philosophy in the first place. These intuitions are bound up, I think, in the idea that moral life is incredibly complicated, and unlikely to be accurately captured by any theory that limits our moral evaluations to a few scant categories. That these categories should be expected to exhibit anything like symmetry or aesthetic elegance flaunts commonsense intuitions even further. As I hope to show, an investigation of the suberogatory may vindicate these intuitions to the extent that it will involve a discussion of several ways in which our actions may defy classification in a three (or five, or twenty) fold scheme of moral evaluation. I do not propose anything so grandiose as a full account of what comprises the "gray areas" of common sense morality, but I do believe that my work may contribute something to the larger project of bringing some of these areas to the fore.

A primary aim of my project will be to identify the difficult questions that I think are most pressing for the advocate of suberogation. In this prospectus I will outline the scope of these issues via a brief discussion of the most extensive available accounts of suberogation from the recent ethical literature. As I am optimistic that the problems raised can be resolved effectively, I will attempt to sketch out some reply, however preliminary and

skeletal, to each. I will conclude with a proposed outline of the dissertation itself, in which I will describe its structure via a description of its component chapters.

I. What Exactly does “Permissive Ill-Doing” Mean?

One of the greatest challenges facing the advocate of suberogation lies in providing an account of the type (or types) of moral behavior that the category is supposed to encompass. At first glance, “permissive ill-doing” might mean any number of things, some of which turn out to be less plausible than others. One might, for example, think that the phrase denotes some sort of contradiction, along the lines of “acts which are both morally permitted and not morally permitted”. The burden lies on the advocate of suberogation, then, to provide some account according to which moral offence can be described coherently. While available accounts of suberogation may vary, I contend that any successful account will turn heavily on some version of the traditional distinction between an act’s *deontic status* and its *appraisability*. To discuss suberogation is to discuss the relationship between an act’s “rightness” or “wrongness”, on the one hand, and the degree to which an agent is blameworthy or praiseworthy for performing it, on the other.⁴ Roughly, suberogatory acts are those which are not *forbidden* (in terms of their deontic status), but for the performance of which an agent will be *blameworthy*. Since there is considerably more of a story to tell here, in this section I will attempt to locate the devil in the details by briefly describing four approaches to suberogation found in the literature. This description will

⁴ I take the terms “deontic status” and “appraisability” from Ishtiyque Haji’s discussion of the distinction in question in his *Deontic Morality and Control* (Cambridge University Press 2002). This idea is also captured by the distinction between the *moral desirability* and *moral worth* of actions discussed in Nomy Arpaly’s *Unprincipled Virtue* (Oxford University Press 2003: pp. 69). I will use both sets of terms in my study.

yield both an overview of the differences between the accounts and a preview of the difficult questions that any successful account of suberogation will need to answer.

Chisholm: Reduction to Appraisability

As I read it, Chisholm's account of suberogation is distinguished by its emphasis on the primacy of appraisability. By this I mean that his view is one on which the deontic status of acts is determined by their moral worth. Chisholm begins his account of moral categories by observing that acts can be evaluated in terms of both their performance and their nonperformance. For any given action, we can imagine its being performed or not performed, and apply a distinct evaluation to each scenario. He then suggests that we choose a pair of contrary ("mutually exclusive but not contradictory"⁵) terms, such as "good" and "bad", or "praiseworthy" and "blameworthy", which can then be applied to each of the scenarios just imagined. This procedure yields a series of possible ordered pairings, represented in the following table:

⁵ Chisholm 1963: pp. 10

	Performance	Nonperformance	Status
1	Blameworthy	Blameworthy	Totally offensive
2	Blameworthy	Neither Praiseworthy nor Blameworthy	Offence of commission
3	Blameworthy	Praiseworthy	Forbidden
4	Neither Praiseworthy nor Blameworthy	Blameworthy	Offence of omission
5	Neither Praiseworthy nor Blameworthy	Neither Praiseworthy nor Blameworthy	Totally indifferent
6	Neither Praiseworthy nor Blameworthy	Praiseworthy	Supererogatory commission
7	Praiseworthy	Blameworthy	Obligatory
8	Praiseworthy	Neither Praiseworthy nor Blameworthy	Supererogatory commission
9	Praiseworthy	Praiseworthy	Totally supererogatory

Since there are nine possible two-place orderings for our contrary terms, Chisholm contends that the richest moral systems will accommodate nine corresponding categories of moral evaluation. While a nihilist might only allow for possibility (5), for example, a strict utilitarian might allow for (1), (3), (5), (7), and (9). As it happens, I think there is some reason to remain skeptical of the first and ninth categories found in the table above. My reservations stem in part from the intuition that it is never blameworthy to refrain from an act for whose performance one would also be blameworthy.

At present, however, it will suffice to limit myself to highlighting the primacy of appraisability in Chisholm's method. The number of possible combinations of our contrary terms determines the number of evaluative categories that we end up with. Interestingly, he identifies two different types of moral offence here. An agent can act in a suberogatory manner either by performing a blameworthy act⁶ whose nonperformance would not be blameworthy, or by refraining from a non-blameworthy act in a blameworthy manner. A full

⁶ To avoid confusion, I should mention two things here: First, I use the term "blameworthy act" as a kind of shorthand to describe acts whose performance renders *agents* blameworthy. Secondly, I have not said anything about Chisholm's views on moral blame. What *makes* for a "blameworthy act" is of course an issue of considerable relevance to my topic.

exposition of the view requires that much more be said than is appropriate for a prospectus; at present it should suffice to say that for Chisholm, “permissible ill-doing” is to be understood primarily in terms of moral blame and praise in conjunction with performance and non-performance.

Driver: Contrast with the Supererogatory

Julia Driver takes a different approach to describing suberogation, choosing to establish the concept by contrasting it with a particular kind of supererogation. She begins by observing that supererogation is commonly described as action that is “above the call of duty.” She claims that this description is too narrow, however. While some supererogatory acts indeed acquire their status in virtue of exceeding some obligation, it seems possible to also perform supererogatory acts where there is no obligation whatsoever to “exceed.” By way of example, she describes the case of opening the door for a person with her hands full at the grocery store. In this case, Driver thinks, the agent in question has clearly done something praiseworthy, but he is not under any obligation whatsoever to act in a particular way. Suberogatory acts, on her view, are best understood in contrast with this kind of supererogation. In her words, the category of the suberogatory is comprised of acts that are “worse than the situation calls for, but *not* forbidden.”⁷

While I think that Driver has some interesting things to say *about* suberogation, at present I should like to limit myself to noting that I am not entirely enthusiastic about her approach to introducing the concept. Even if she could be considered successful in describing a “special class” of supererogation (and I am not sure that she is), there remain a

⁷ Driver 1992: pp. 290.

number of puzzling asymmetries between the suberogatory and the supererogatory that require further explanation. I will have more to say about this in the next section.

Mellema: Distinguishing Between Types of Moral Reasons

Gregory Mellema, in his *Beyond the Call of Duty*, offers an analysis of suberogatory acts, according to which an act is suberogatory iff:

1. The performance of the act violates no moral duty or obligation.
2. The performance of the act is morally blameworthy.
3. The omission of the act is not morally praiseworthy.⁸

Mellema follows Chisholm's model closely in detailing the nature of moral offence, but an important difference should be noted here. If he were following Chisholm entirely, then (1) and (2) would render (3) redundant. Remember, in Chisholm's system, a forbidden act *just is* an act the performance of which is blameworthy and the omission of which is praiseworthy. If we know that the performance of an act is blameworthy, and we know it isn't forbidden, then on Chisholm's view we know its omission is not blameworthy. That Mellema includes (3) in his analysis leads me to suspect that his view of appraisability differs from that at work in Chisholm's view. In a recent article, Mellema writes, "I shall understand the concept of being morally blameworthy to mean deserving or warranting moral criticism or censure."⁹ He says nothing further, but does provide a reference to a passage in A.C. Ewing's 1947 book *The Definition of Good*. In that book, Ewing writes, "[W]e may have to admit a second indefinable concept in ethics, moral obligation, as distinct from fittingness."¹⁰ While I do not want to commit Mellema to any specific view on what it means for an act or agent to be

⁸ G. Mellema, *Beyond the Call of Duty: Supererogation, Obligation, and Offence*. Albany: SUNY Press, 1991.

⁹ G. Mellema, "Moral Dilemmas and Offence", *Ethical Theory and Moral Practice* 8 (2005) pp. 292

¹⁰ A.C. Ewing, *The Definition of Good*. New York: Macmillan, 1947, p.170

deserving of blame (or praise)—he simply hasn’t said enough on the matter—I do think that Ewing’s comment provides us with the beginnings of another approach to explaining/describing suberogation.

The view I have in mind differs from Chisholm in that it takes there to be *two* fundamental (irreducible) moral concepts, corresponding to deontic status and appraisability. Rather than explaining an act’s status as forbidden, obligatory, or permissible in terms of its praiseworthiness, this view suggests that deontic status is determined independently of an act’s appraisal. A full elaboration on this suggestion exceeds the scope of the current prospectus, but for present purposes it may suffice to note that a fully developed account of suberogation will turn heavily on the details of the relationship between moral desirability and moral worth. The central issue at question in determining the possibility of suberogation is, I believe, the possibility of a particular combination of worth-based and desirability-based evaluations pertaining to a particular act.

Haji: Suberogation Without Blame

Ishtiyaque Haji discusses the suberogatory in his *Deontic Morality and Control*, using the category to reject a particular view about appraisability, according to which:

“An agent is morally praiseworthy for performing an action only if that action is (overall and not just *prima facie*) morally obligatory or permissible...and an agent is morally blameworthy for performing an action only if that action is (overall and not merely *prima facie*) morally wrong.”¹¹

Suberogatory acts, if they are possible, provide counterexamples to the second portion of this view. Interestingly, Haji differs from the philosophers mentioned thus far by asserting that supererogatory acts need not be praiseworthy, and that suberogatory acts need not be blameworthy. He writes:

¹¹ Haji 2002: pp. 163

“The ‘deontic normative status’ of an act, surely, all other things held constant, save change in the agent’s purpose or goal, does not alter with such change in purpose or goal (though appraisals of *appraisability* could alter).”¹²

Along the lines of the suggestion raised in the above discussion of Mellema’s view, Haji thinks that moral desirability is determined independently of moral worth, such that a change in the latter need not entail a change in the former. As a result, he claims, we can describe cases where an agent performs a supererogatory act that is not praiseworthy because of her motives. To illustrate this point, he gives the example of a mail carrier who dashes into a burning building to save a baby (an act which is presumably not morally required), in the hopes that the baby’s billionaire parents will give her a reward that she can use to pay off her gambling debts.¹³ Conversely, he thinks, we can imagine suberogatory acts that are not blameworthy. He gives the example of a woman who lingers at her restaurant table when there are many customers (whom she does not notice) waiting for the table. The act is suberogatory, he thinks, but because the woman doesn’t *mean* to keep people waiting, it isn’t blameworthy.

I am wary of Haji’s “blameless suberogation” for two reasons. First, if we take away the praiseworthiness of supererogatory acts and the blameworthiness away from suberogatory acts, we need to give some account of what distinguishes them (respectively) from other permissible acts. Without appeal to a difference in terms of deserved blame, it is difficult to see what makes an act suberogatory, as opposed to morally neutral. Haji addresses this worry briefly, claiming that “the special disvalue of suberogation, in those cases in which we think suberogation is especially disvaluable, is a function of the fact that when one suberogates, one does in a less-than-maximal or much-less-than-maximal way

¹² Ibid. pp. 177

¹³ Ibid. pp. 172

what is *bad* and morally demanded.”¹⁴ I confess that I am not certain how this claim is supposed to improve the situation for his view. If the disvalue of suberogatory acts is not somehow bound up in moral blame, and it is not (by definition) a function of violating moral obligation, then something more needs to be said to explain why the act is “bad.”

The second issue that I take with Haji’s view pertains to his chosen examples. Regarding the first, it is not clear that he has effectively described a case of non-praiseworthy supererogation. According to the view of moral worth found in Nomy Arpaly’s *Unprincipled Virtue*, this case is not obviously one in which the agent’s behavior is not praiseworthy. On Arpaly’s view, agents are praiseworthy in their behavior for responding to moral reasons, regardless of their *awareness* of doing this. While the agent in Haji’s case would clearly be *more* praiseworthy if she took the moral reasons for saving the baby into conscious consideration, it might still be the case that on some level she *is* responsive to those reasons, and as such deserving of *some* moral praise. Haji’s second example is, I think, even less persuasive. It is far from clear that lingering too long at a restaurant when others are waiting qualifies as suberogatory, *even if the agent is aware* that others are waiting. Common sense intuitions may be confused as to whether this kind of behavior is morally permissible to begin with. This difficulty, however, is not unique to Haji’s example; there are a number of difficulties that any proposed cases of suberogation will inevitably encounter. I will turn my attention to these difficulties in a moment.

If anything, I think that the views described above show that there is quite a lot to sort through in trying to determine a coherent way to describe “permissive ill-doing”. The issues described here will need to be addressed in considerable detail in the course of my proposed research, but I anticipate that the view on which I will settle is one according to

¹⁴ Ibid. 179

which blameworthiness *is* a necessary condition for suberogation, along with moral permissibility. The relationship between deontic status and moral appraisability is something of a tangled mess, and I expect that a full-fledged investigation of suberogation will provide an excellent opportunity to tease some of these tangles out.

II. Why are Clear Cases of Suberogation So Hard to Come By?

When introducing an evaluative category, it would seem natural to begin by appeal to a series of examples. The deontic category of “forbidden” might be illustrated by appeal to cases of murder, the category of “obligatory” might be illustrated by appeal to cases of truth-telling, and so on. That I have not yet offered an *example* of a suberogatory act might, then, seem strange. After all, the accounts of suberogation offered by Chisholm, Driver, Mellema and Haji all include a number of purported examples. As it happens, however, I think that it is a poor strategy to begin with examples when trying to persuade opponents of suberogation that the category is indeed legitimate. For any example of which I am aware, immediate objections arise to the effect that the example chosen is not in fact a case of an act that is both morally permissible and morally blameworthy. In this respect, reflection reveals a puzzling asymmetry between the suberogatory and supererogatory—our pretheoretical intuitions appear to be far more ready to countenance the latter than the former. Why is this, exactly? Stock examples of supererogation abound (including, perhaps most famously, J.O. Urmson’s case of the soldier and the hand grenade¹⁵). But while common sense readily grants that we can perform acts that are simultaneously praiseworthy and not obligatory, clear cases of suberogation are much harder to find. In this section and

¹⁵ Urmson, “Saints and Heroes”, in A. Melden, ed. *Essays in Moral Philosophy*. Seattle: University of Washington Press, 1958. pp. 198-216

the next I intend to describe why I think this is, and will briefly sketch the steps that I think the advocate of suberogation¹⁶ should take to remedy better his intuitive situation.

The first difficulty that proposed cases of suberogation face, and that which I will address primarily in this section, is a series of misconceptions about what suberogation must be like. The characterization of moral offences as “blameworthy but not forbidden” leaves open quite a bit of room for further interpretation, such that the OS might still have in mind something that even the AS need not regard as plausible. The difficulty underlying each of the misconceptions I intend to discuss here, I believe, is a tendency to rely too heavily on supererogation as a “contrast class” for suberogation. While it might seem natural to try to understand suberogation as the “opposite” of supererogation, there are simply too many significant asymmetries between the two categories to make such comparisons fruitful. I mentioned this briefly in my discussion of Driver’s account of suberogation in the first section, and shall address the matter in greater detail here.

The first significant asymmetry between supererogation and suberogation I would like to address pertains to the broad strokes that are often used to characterize the former as “exceeding the obligatory.” It is quite common to hear “nutshell” characterizations of supererogatory acts as acts which are “above the call of duty”, or “better than what is required.” The difficulty with contrasting suberogation against this kind of characterization is that it would seem to demand that suberogatory acts be somehow “beneath the forbidden” or “worse than what is permissible.” This is a problem because such descriptions suggest that suberogatory acts are not in fact morally permissible at all. How could an act that is “beneath the forbidden” be morally permissible? Since this kind of

¹⁶ From here on, I will use the abbreviation AS for “advocate of suberogation” and OS for “opponent of suberogation”.

worry threatens one of the two distinguishing characteristics of suberogatory acts, it will be important to offer something in the way of a response.

As it happens, I think that this asymmetry is merely apparent, and does not hold up to closer scrutiny. This is because supererogatory acts, properly understood, are not necessarily “better than” obligatory acts. As Chisholm and others have pointed out, some obligatory acts are much better, which is to say much more *praiseworthy*, than some supererogatory acts. It is quite easy to conjure cases in which agents are morally required to perform heroic acts—firefighters perform such acts all the time by virtue of the demands of their profession. It is equally easy to imagine instances of trifling supererogation—while it is certainly supererogatory to hold the door open for a stranger, this is hardly the sort of thing that constitutes heroism. Moreover, if we are to follow Driver’s view, it may turn out that it is possible to perform acts of supererogation that do not *exceed* any duty whatsoever. All of this suggests that there is no reason to expect supererogatory acts to be “above the obligatory”. Conversely, there is no reason to expect suberogatory acts to be “beneath the forbidden”. That being said, I do not want to rule out the possibility that some suberogatory acts *might* be worse than some forbidden acts, at least where “worse” means “more blameworthy”. If it turns out that moral appraisability is determined independently of deontic status, then there is no immediate reason to suppose that this should be impossible.

Mellema notes a second asymmetry between the suberogatory and the supererogatory. He points out that acts seem *less* likely to qualify as suberogatory the worse (i.e. the more blameworthy) that they are, whereas acts seem *more* likely to qualify as supererogatory the better (i.e. more praiseworthy) that they are¹⁷. This may account in part for the intuition that *any* degree of blameworthiness seems to move an act into the territory

¹⁷ Mellema 1991: 196-197

of of the forbidden, and thus for the intuition that suberogation is implausible overall. Haji argues that Mellema's asymmetry is challenged by the well-known Frankfurt-type examples of lying involving counterfactual intervention. In such cases, Haji argues, "your lying is *not* wrong... (nor is it, of course, right or obligatory) even though you may be more blameworthy for lying in some than in others."¹⁸ If it turns out that I am *incapable* of telling the truth in two instances (by virtue of the counterfactual intervener), then on Haji's view my lying cannot be forbidden in either instance. However, to the extent that my lie might be more *severe* in one instance than another (I might lie about my favorite flavor of ice cream in one and about the location of a nuclear device in the other) the *appraisability* of my behavior may be evaluated differently. This response turns heavily again on the idea that moral appraisability is strictly independent of deontic status. If this is right, then the appraisability of a particular act tells us nothing about the likelihood that it will be supererogatory versus obligatory, or suberogatory versus forbidden.

A related asymmetry arises at this point regarding the independence of appraisability and deontic status. It was mentioned earlier that supererogatory acts might be either heroic (i.e. Urmson's hand grenade case) or trifling (i.e. holding the door for strangers). Reflection reveals that instances of both trifling and heroic supererogation abound. It's not at all clear, however, that common sense intuitions are willing to grant an abundance of both trifling *and* *villainous* types of suberogation. Chisholm (whose use of the term "villainous" I borrow here) contends that both types are possible¹⁹, but David Heyd has argued that there cannot be any such thing as villainous offence:

By its nature, a moral system does not leave patently bad action as morally permissible. In that respect, good and bad, the virtuous and the vicious, are *not* symmetrical from the deontic point of

¹⁸ Haji, 176-177

¹⁹ Chisholm 1963, pp. 8

view: the good is open-ended in a way that the bad is not. The extremely good cannot be required, but the extremely bad is the prime target of prohibition.²⁰

By way of response, it should be noticed that Heyd is wrong about what can be required. As shown above in the case of firefighting, heroism is sometimes obligatory. Still, the key question remains: Is truly heinous suberogation possible? The answer to this question will depend heavily on the theory of moral worth that I adopt in my dissertation, though I should say at this point that my intuitions are tested more by examples of villainous suberogation than cases of trifling suberogation.

The asymmetries discussed above deserve closer attention, but I believe that the brief account given here shows that they explain some of the intuitive resistance to the plausibility of suberogation. The suberogatory differs from the supererogatory in some important ways, and I believe that a thorough discussion of the relationship between appraisability and deontic status will make these differences clear. I don't think that a clarification of these differences will be sufficient, however, to alleviate pretheoretical skepticism of suberogation. There is another source of this kind of skepticism that has nothing to do with asymmetries between supererogation and suberogation. Namely, it would seem that the intuitions associated with purported examples of suberogation are subject to alternative explanations that do not involve "permissive ill-doing". An investigation of these alternative explanations will be crucial to my project, as I will need to argue that they cannot account for *every* available example of suberogation. With this in mind, I will now turn my attention to the most pressing of these alternative explanations.

²⁰ D. Heyd, "Supererogation". Entry in the Stanford Encyclopedia of Philosophy: <http://plato.stanford.edu/entries/supererogation/>

III. Do We Really *Need* to Countenance Suberogation?

Many of the existent philosophical discussions of suberogation touch on the topic of alternative explanations for purported examples of morally offensive behavior. I think that a thoroughgoing discussion of such alternative explanations will be crucial to a defense of the suberogatory, particularly because I don't think that enough has yet been said about this aspect of the issue. In this section, I will proceed by beginning with a list of possible cases of suberogation, both from the literature and of my own design. I will then proceed to an examination of alternative explanations for the intuitions that these examples raise, during which I will briefly describe how I think suberogation fares against these alternative explanations. It will be important to remember that in each case, the AS must show that the act in question is morally permissible (i.e. not forbidden) *and* that the agent is blameworthy for performing the act.

Cases

*The Restaurant Lingerer*²¹

An agent has finished her meal at a busy restaurant. Despite being aware that there are many people waiting in line for her table, she chooses to linger for a while, depriving the other customers of the table and the restaurant server of the revenue that these customers would generate. Haji offers a variation on this case in which the agent is unaware that there are others waiting for her table. In either form, the case is offered as an instance of trifling suberogation.

The Heartless Coworker

The following case is offered by Chisholm as an example of villainous offence: "[S]uppose A knows concerning B, whom A dislikes, that the loss of B's employment would result in great tragedy for B and his family; that there is another man, C, who could do B's work but no more satisfactorily than B does it; and that B's employer, even if he knew the foregoing, would

²¹ This case is proposed in Chisholm and Sosa, "Intrinsic Preferability and the Problem of Supererogation". *Synthese* 16(1966). Pp. 321-331.

replace B by C if he thought that C were available. One might plausibly argue that, if A were deliberately to bring the availability of C to the attention of B's employer, his act would be permissible but at the same time heinous and inhuman."²²

*The Bus Seat Hog*²³

While sitting comfortably in a crowded bus, you see a man step onto the platform that appears to be quite exhausted. As he approaches you, he gives you a longing look that clearly indicates that he would like to sit down. You consider getting up to offer him your seat, but decide that you prefer to remain comfortable in the seat that, by right of having been there first, is yours.

*Owed Favors*²⁴

On numerous occasions, A has asked B for help with various unpleasant tasks, like moving to new apartments and painting. It is clearly communicated between A and B that these requests are for favors, and that by definition reciprocation is not required. One day, B calls A to ask for a favor. A knows that B has done a number of unreciprocated favors for him, but nonetheless refuses to help B.

*Multiple Abortions*²⁵

Suppose that a highly liberal view of abortion is true, such that agents have a universally applicable moral right to have abortions for any reason whatsoever. Now imagine that A learns that B has had 15 abortions over the course of the last few years. While the universally applicable right to abortions guarantees that none of these abortions can be morally forbidden, A nevertheless finds herself holding B in moral contempt.

*The Callous Lover*²⁶

C is a close friend of A and B, a couple who are ten years into a monogamous romantic relationship. One day, A informs C that he plans to leave B because he is bored with the relationship, and does not feel like making any efforts to re-kindle his interest. Deeply upset, C tells A that this seems a rather callous thing to do, particularly since it will devastate B. A agrees, but indicates that he simply doesn't care. He insists that he has a right to leave B whenever and however he chooses.

²² Chisholm (1963) pp. 5

²³ This case is offered in Driver (1992): pp. 286-287

²⁴ Ibid. pp. 288-289

²⁵ Ibid. pp. 289

²⁶ This case was suggested to me by Jason D'Cruz.

*The Merciless Shopper*²⁷

A is grocery shopping late at night, when only one checkout counter is available. After spending an hour amassing a full cart of groceries, she heads to this counter and waits in line to pay for her items. While waiting, B steps into the line behind her with a single can of beans. B asks A if she would mind allowing him to make his purchase before she makes hers, since his transaction will only take a moment and hers will take several minutes. A laughs haughtily, and refuses.

The Red Sox Die-Hard

A is a server at a café with well-defined requirements for customer service. It is a slow day at the café, and A has only one table of customers to serve during the lunch hour. He is in a cheery mood, and decides to provide this table with extra-special service, offering coffee refills and checking on their satisfaction twice as often as is required by the café regulations. The café manager is impressed with A's extra effort, and thanks him for being so helpful for the patrons, who are prominent organizational managers for the New York Yankees. A, who is a devout fan of the Boston Red Sox, mumbles, "I had no idea," and immediately reverts to the bare minimum of service required by café regulations.

*The Voodoo Doll*²⁸

Angry about the criticism she received on a recent paper, A sticks pins in a voodoo doll resembling her course's teaching assistance. She doesn't believe that this will actually harm her TA, but she nevertheless believes that it is a wicked thing to do.

I see no reason to think that these examples are representative of all of the kinds of cases to which the concept of the suberogatory might be legitimately applicable. But they are representative of the kinds of cases that proponents of suberogation have offered thus far. Now I will briefly discuss the alternative explanations that the OS will be likely to offer for the intuitions that the examples are supposed to raise.

The Legal/Moral Distinction

²⁷ This case was raised during a conversation with Felicia Nimue Ackerman.

²⁸ This case is raised in Driver, 1992: pp. 294

In response to several of the above examples, the OS might say that to call the relevant action suberogatory is simply to conflate moral permissibility with legal permissibility. The Heartless Coworker is of course not *legally* forbidden to contribute to the replacement of his colleague, but it is not obvious that he is *morally* permitted to do so. Chisholm offers the case because it is supposed to illustrate villainous office, presumably because the result of the action is much worse (for B, at any rate) than the result of lingering at a restaurant table. But the fact that the result is *so* bad provokes the sense that the Heartless Coworker's behavior is, from the deontic point of view, forbidden. Likewise for the Red Sox Die-Hard—the OS will likely say that the only sense in which the Die-Hard's behavior is permissible is a legal sense. He hasn't flaunted the rules of his café, but that doesn't mean that he's morally permitted to treat customers worse after learning that they are affiliated with the Yankees. This may well be morally forbidden, and if it is, then the case is not one of suberogation after all.

I think that the OS is probably right to invoke this move in response to some of the above cases. The legal/moral distinction probably does a passable job of accounting for all relevant intuitions with respect to the Heartless Coworker case. Still, I think it would be a mistake to rely too heavily on this distinction for other cases. For example, in the bus seat hog case, do we really want to say that you have a moral obligation to give up your seat? It seems to me that giving up your seat in this case would be a paradigmatic instance of supererogation. And supererogatory acts are characterized in part by the fact that they are *not* morally required. As such, it cannot be the case that failing to give up the seat flaunts a moral obligation—this act should, from the deontic point of view, be deemed permissible.

The Perfect/Imperfect Duty Distinction

Of the Merciless Shopper, the OS might say that what has happened is not an instance of suberogation, but rather a failure to fulfill an imperfect duty. We have an obligation, the story might go, to yield to persons with only one item at the checkout line *some* of the time, but not *all* of the time. Since the imperfect duty to yield to one-item shoppers does not specify *when* we must yield, it would be incorrect to say that the Merciless Shopper has *violated* an obligation. She has certainly not *fulfilled* the obligation in this particular instance, but that's not the same as a violation. Moreover, aside from laughing haughtily (which, the OS will hopefully acknowledge, is uncalled for), there is nothing blameworthy about failing to fulfill an imperfect duty on a particular occasion. The Merciless Shopper's behavior, then, is not suberogatory—it's an ordinary instance of an agent performing a permissible, appraisably neutral act. If there is any intuitive disapproval here, it has nothing to do with the appraisability of her behavior, but rather to do with the fact that we have misunderstood the nature of imperfect duties.

The distinction between perfect and imperfect duties can perhaps account for some proposed instances of suberogation, and I suspect that it is in fact applicable to the Merciless Shopper case. However, I think that identifying the Merciless Shopper's refusal to yield as a failure to fulfill an imperfect duty is *compatible* with calling the refusal suberogatory. It seems plausible that a failure to perform an imperfect duty on a particular occasion, while not *forbidden*, might well be blameworthy. If one were to adopt, for example, the reason-responsiveness model of blame, then it may be possible to say that a failure to fulfill an imperfect duty on a particular occasion is a failure to respond to a moral reason that one has, and thus deserving of moral blame. The reason that one has to fulfill an imperfect duty is of course not the same as the reason that one has to fulfill a perfect duty, as it does not specify the beneficiary of the duty's fulfillment (at least according to one version of the

distinction).²⁹ Still, it is a reason to benefit *someone*, and failing to fulfill the duty on a particular occasion is failing to respond to that reason. Julia Driver writes, “If an imperfect duty only sets a vague quota, then failing to take the opportunity to edge up toward the goal is not a violation. The shoe salesman who fails to close a deal does not violate his store’s maxim ‘Sell many shoes’.”³⁰ I agree that the Merciless Shopper has not *violated* any duty—after all, I think that her behavior is suberogatory, and therefore not forbidden (which is to say, not in violation of a duty). It remains true, I think that the Merciless Shopper has not *fulfilled* a duty that she in fact has, and has thus failed to respond to a moral reason that she has in this case. As such, she may still be blameworthy for refusing to yield to her fellow grocery store patron.

Betrayal of Poor Character

The OS might say of cases such as those of the Red Sox Die-Hard and the Voodoo Doll that there is nothing objectionable about the *acts* they portray. Rather, it is the fact that the acts reveal or give us reason to suspect that the agents involved have morally objectionable character traits that accounts for our intuitive revulsion. I am actually quite happy to grant this explanation, because it seems to amount to calling the act suberogatory. It is misleading, I think, to say that one can “evaluate an act as suberogatory”, just as I think that it is misleading to say that one can “evaluate an act as supererogatory.” Both categories (the suberogatory and supererogatory) are best understood as comprised of elements of act evaluation as well as agent evaluation. Supererogatory acts are acts which are not morally

²⁹ Chisholm identifies two ways of drawing the perfect/imperfect duty distinction. In one version, perfect duties are duties to be fulfilled to or for a particular person, while imperfect duties are duties to perform act that benefit some unspecified person. In another version, “imperfect duties are said to be ‘indeterminate’ in that we have latitude with respect to the manner in which we fulfil them, whereas perfect duties are not thus ‘indeterminate’.” (Chisholm 1963: pp. 4)

³⁰ Driver 1992: pp. 291

required from the deontic standpoint (which is the standpoint concerned with acts) and the performance of which are praiseworthy from the standpoint of appraisability (which is the standpoint concerned with the moral desert of agents). Conversely, suberogatory acts are acts which are not morally forbidden from the deontic standpoint and the performance of which are blameworthy from the standpoint of appraisability. To say that there is nothing wrong with the Red Sox Die-Hard's behavior is compatible with saying that the behavior is suberogatory, provided that when we say there is "nothing wrong" with it, we are speaking strictly in terms of deontic status.

Moreover, to grant that the act betrays poor character on the part of the Die-Hard provides an excellent mechanism for explaining why the act is blameworthy (and in turn, why it is suberogatory). To say that an act betrays poor character is to say something about the degree of moral concern that factors into the agent's performance of the act.³¹ If it turns out that agents are more praiseworthy for performing acts from a deeper level of moral concern, then perhaps they are more *blameworthy* for performing acts motivated by an attitude that is *incompatible* with moral concern. If so, then the result is an evaluation of the Die-Hard according to which his behavior is morally permissible from the standpoint of deontic status, but blameworthy from the standpoint of moral appraisability. I expect that there may be some resistance to this suggestion, particularly in cases where the agent *knows* that her behavior is not, deontically speaking, forbidden. Since the student in the Voodoo Doll case doesn't believe that her behavior will actually harm her instructor, she might also have the (correct) belief that it is not morally forbidden to stick pins in voodoo dolls. The OS might ask, as Driver does, "How could doing what you know to be morally neutral be a sign of bad

³¹ This description of character is taken from Arpaly (2003: pp. 95-96). I am not entirely certain, however, that my subsequent comments about increasing degrees of blame are compatible with her view.

character?”³² The answer to this question lies again in an appeal to the idea that the student’s behavior is motivated by attitudes that are *incompatible* with deep moral concern. In fact, the kind of attitude that motivates the student’s behavior is precisely the kind of attitude that would make a forbidden act *more blameworthy*. Her behavior in this instance happens not to be forbidden. All the same, I think that the attitudes involved in her sticking pins in the doll merit moral blame.

Moral Wrong and Moral Rights

It seems intuitively plausible to say that there is something *wrong* with suberogatory acts. To the extent the agent who commits them ought to act better than she does, we may find ourselves inclined to say that she acts “wrongly”. This kind of statement may raise some difficulties for the AS, however. As Jeremy Waldron notes in his paper “A Right to Do Wrong”, there is some precedent for the view moral rights are incompatible with moral wrongdoing³³. If this is correct, then one might think that the Callous Lover cannot be guilty of suberogation, if it is true that he is acting “within his rights”. He has either done something wrong, or (where “or” is exclusive) he has acted within his rights—both propositions cannot be true, according to the view in question. This objection is an important one, I think, because it gets at the central intuitive resistance that the possibility of suberogation is bound to face: How can it be morally permissible to do something wrong?

Ultimately, I think that the objection (as well as the intuitive resistance that motivates it) is the result of an equivocation. For the purposes of describing suberogatory acts, it will not do to use terms such as “wrong”, “not called for”, or “subject to moral criticism”. This is because each of these terms might apply equally well to distinct ethical concepts. On the

³² Driver 1992: pp. 294

³³ J. Waldron, “A Right to Do Wrong”. *Ethics* vol. 92, no. 1 (1981), pp. 21-39

one hand, and act might be described as “wrong” because it has a particular deontic status—namely, it is morally forbidden. While the specific details of what *gives* an act this deontic status will depend of course on the theory that one chooses to evaluate moral obligation, the important thing to notice here is that this is a separate issue from the moral *worth* of an action³⁴. One might describe an act as “wrong” because the agent who performs it is *blameworthy* for having done so. This need not, I propose, have any bearing on the deontic status of the act. This means that the objection to the Callous Lover case might be spelled out in a number of ways. It might mean something like the following: The Callous Lover is not guilty of suberogation, because it is impossible that one should have a moral right to do that which is morally forbidden (from the deontic standpoint). This version of the objection, however, is unlikely to address what the AS has in mind when she gives her account of the Callous Lover case. Identifying the Callous Lover’s behavior as suberogatory entails evaluating it as *permissible* from the deontic standpoint. The *wrong* associated with the Callous Lover’s behavior, according to the AS, is a separate issue—it results from the fact that the Callous Lover is *blameworthy*, from the standpoint of moral appraisability. If the case is properly understood in this way, then it is perfectly possible to say both that the Callous Lover acts within his rights (to the extent that his behavior is not morally forbidden) and that he has done something wrong (to the extent that his behavior is blameworthy).

A different (though closely related) objection to the Callous Lover case might be made on the basis of the moral rights involved. In the paper cited above, Waldron argues that we sometimes have a moral right to perform acts that *are* morally wrong. If his argument is successful, then the Callous Lover’s (let us suppose accurate) statement that he

³⁴ This statement should be made and interpreted carefully. It might turn out that, according to some theories, moral worth is *not* an entirely separate issue from moral desirability. However, to the extent that it is possible to construct theories according to which independence between the two types of evaluation *is* preserved, I maintain that deontic status is a “separate issue” from moral worth.

is within his rights to leave his partner does not guarantee that his behavior is not wrong. As such, according to the objection, his behavior is not guaranteed to fulfill the sufficient conditions for suberogatory action. I think that this objection will be best handled in a manner similar to the objection above; it ultimately turns on an equivocation. In his account of what it means to have a moral right to do wrong, Waldron eventually writes the following:

[E]ach action protected by a right will, in its particular circumstances, be an action that is *called for* from the moral point of view, or an action that is *subject to moral criticism*, or an action on which *morality has nothing of importance to say*.³⁵

Having a “right to do wrong”, on his view, turns out to mean having a privilege³⁶ to perform an action that is subject to moral criticism. It seems to me that a perfectly reasonable interpretation of this claim is that we can sometimes perform acts that are permitted from the deontic standpoint, but blameworthy from the standpoint of appraisability. The “rights to do wrong” that Waldron identifies turn out to refer to none other than suberogation itself.

My response to the objections discussed in this section raises an immediate question, of course, pertaining to the relationship between deontic status and appraisability. It will likely be noticed that until this point I have not endorsed any specific theory of either. This is an issue that eludes adequate treatment in the current prospectus, but I suspect that my dissertation will involve considerable discussion of the compatibility of suberogation with various theories of moral right and of moral worth.

Degrees of Severity in Duties

The final alternative explanation I’d like to consider here pertains to the AS’s claim that examples of suberogatory acts are examples of acts that are permissible from the

³⁵ Waldron 1981: pp. 35.

³⁶ Here I am using the term as it is found in the traditional Hohfeldian classification of rights.

deontic standpoint. To any of the above examples, the OS might simply say, “The action in question is *not* morally permissible. It’s *forbidden*. It’s just that it violates a duty that isn’t particularly serious.” Lingering at your restaurant table is wrong, on this view, but it’s *mildly* wrong—where this means that it violates a duty to which we do not attach a great deal of importance. We’re tempted to call it ‘suberogatory’ simply because it violates a duty that is of much lesser significance than, say, the duty to abstain from murder.

I am prepared to grant that some proposed examples of suberogation might turn out to be examples of actions that are in fact morally forbidden. I do not think, however, that this explanation will account for *every* proposed instance of suberogation. The case of Owed Favors is a good case for illustrating this point—it is hard to see how the person who refuses to “repay” a favor has violated a moral obligation, but much easier to imagine that he might be blameworthy for his refusal. Granted, under some theories of right, it may turn out that a story can be told according to which his behavior is morally forbidden. Perhaps a strict maximizing utilitarian would object that because a refusal to “repay” a favor could fail to bring about the best possible state of affairs, it could well be forbidden. But I doubt that this will be the judgment of *every* theory of right. As indicated above, a significant portion of my proposed project will need to address the compatibility of suberogation with different theories of appraisability and desirability. I anticipate that it will turn out to be incompatible with some of these theories. Nevertheless, for those theories that *can* accommodate suberogation, I maintain that the category is a valuable asset. The phenomenon of recognizing an action as “within the boundaries of the rules”, while simultaneously holding its agent in contempt, is not unfamiliar. The ability to explain the totality of moral experience, including its “gray areas”, is an outcome that I believe many moral theories will do well to embrace.

Final Remarks

An investigation of “permissive ill-doing” reveals the category of the suberogatory to be intimately tied to several interesting issues in moral theory. A satisfactory defense of the viability of the suberogatory must engage questions about appraisability and its relationship with deontic status, issues surrounding the relationship between suberogation and supererogation, and problems regarding potential alternative explanations such as the distinction between perfect and imperfect duties. Each of these topics is deserving of further development. To the extent that consideration of the suberogatory provides unique insights into each, and to the extent that it provides some apparatus for further exploring the “gray areas” of commonsense morality, I believe that the category is itself deserving of a good deal of serious philosophical inquiry.

While the structure of my final dissertation may of course require revision as I progress in my research, at the moment I propose that my project be divided as follows: In the first chapter, I will provide a thorough expository review of the major literature relevant to my topic, including further treatments of the key articles described here. This review will establish the key challenges that I will address throughout the remainder of the dissertation. The second and third chapters will feature a positive account of suberogation. The account will be divided across two chapters to allow for separate discussions of the independence of moral worth and deontic status, and of the compatibility of suberogation with various theories of each. The fourth chapter will be comprised of a thorough rebuttal to the major objections to the possibility of suberogation outlined in this proposal. The fifth will involve a discussion of some further applications of the concept of suberogation.

