

On Legal and Moral Defeasibility

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“Jessica’s eyes slowly filled with tears. Duncane looked away, sideways, downward. He had not left her then, when he ought to have done, when parting would have been an agony to him. He was leaving her now when it was less than agony, when it was almost relief. He ought to have left her then.” (Iris Murdoch, *The Nice and the Good*, p. 25)

I. Introduction

The paper discusses the notions of defeasibility in general and defeasible norms in particular (with focus on legal and moral defeasibility). By focusing on defeasibility of legal and moral norms it aims to arrive to a more general understanding of defeasibility covering the whole field of normativity, including all normative domains. It begins by outlining an understanding of defeasible norms that closely links them to the notion of an exception. Then it further focuses on two attempts that relate defeasible norms to some sort of normalcy conditions, i.e. views defeasible norms as holding in normal circumstances only. By investigating this proposal it addresses a question whether such a model allows for defeasibility to go “all the way down” in the normative domain, or is it merely a feature of some sort of mid-level norms.

The concept of defeasibility, especially in relation to the legal and moral domain, has become more and more popular point of discussion in the last couple of decades (Ferrer Beltrán & Ratti 2012; Hooker & Little 2000; Lance, Potrč & Strahovnik 2009). Defeasibility is a multi-faceted concept that is used in different senses and can be related to various subjects. There are several open questions or dimensions in relation to it. First, there are a number of candidates for being defeasible, among them concepts, norms, norm formulations, rules, standards, principles, laws, generalizations, ideals, reasoning, facts, opinions, statements, decisions, regulations, kinds, etc. (Chiassioni 2012, 162; Lance and Little 2007). Next, there are several important open questions about the origins, nature, and scope of defeasibility. And finally, there is a question about the consequences of defeasibility for theoretical aspects of the given normative domain as well as for normative practice. Answers to these questions vary in the debate and we can find deep disagreements on almost all the mentioned aspects. For the purposes of this paper I will focus my attention on defeasible norms, with a hope that what will be established will be in general transposable in more or less direct way to other defeasible phenomena.

II. Defeasible norms and exceptions

The debate on defeasibility can be situated within a more general debate on the question of relationship between general principles and particular cases that has been present in philosophy since its early beginnings.¹ These discussions often focus on the relationship between general norms on one hand and particularities and exceptions on the other, but often

such understanding of exceptions is not radical enough since they are understood as a mere consequence of underspecified or incomplete norms, which could be in principle somehow avoided.ⁱⁱ But, as I would wish to claim, genuine defeasibility understood as the “hard problem” goes beyond this and includes genuine exceptions, which are not such that they could already be properly included in a general norm or fully specified subsequently (cf. Chapman 1998, 448; Celano 2012).

What do we in fact mean when we say that e.g. a certain norm, rule, reasoning or concept is defeasible? To get an initial grip on the concept it is most useful to relate it to the concept of an exception, in particular to the presence of (the possibility) of exceptions, i.e. cases that on the one hand fall under a certain norm, rule, or concept, but at the same time have unbecoming normative consequences given which we tend to exclude these cases from falling under the mentioned norms, rules, or concepts. Along these lines Brožek (2014) claims that a “rule of the form $A \Rightarrow B$ is defeasible iff it is possible that although A obtains, B does not follow.”

The notion of an exception or an exceptional case as opposed to the normal cases is thus the primary hallmark of defeasibility. A norm is defeasible if it allows for exceptions, meaning there is a case that the norm should supposedly cover, but it proves otherwise. We must add some further amendments to this initial grasp of the concept. First, an exception must be in a sense “genuine” exception, meaning that the exception is not merely a consequence of an initially poorly specified norm or a use of the “rule of thumb” norms (Celano 2012). The defeasibility of norms is in this way not merely due to their incorrect, imprecise or vague formulation that could in principle be resolved or more clearly spelled out. Defeasible norms are not some kind of “rules of thumb”; which we can use most of the time, but which we are also able, if necessary, to specify and turn into an exceptionless norm. If defeasible norms would be associated with just this type of “exceptions”, they would not be a particularly interesting phenomenon. Second, the set of possible exceptions must be in principle open, meaning that we can never enumerate all the possible exceptions to the norm and in this way close it off. If that would be the case then these taxatively specified exceptions could be built into the norm itself and the norm would cease to be defeasible. Third, a defeasible norm remains the same and retains its normative power even when we are able to find an exception to it; in this sense it “survives” this exception and can hold for all further, non-exceptional cases. If we were prepared to abandon or modify the norm in the case, when we encounter an exception against it that would make the phenomenon of defeasibility fairly empty. Fourth, a defeasible norm remains in the “normative space” even in the case of an exception and can shed light on the nature of the exceptional case or can indirectly influence the final normative solution.

We can briefly demonstrate these points with a very simplified example of a supposedly defeasible moral norm expressed as: “Causing pain is morally wrong”. For this norm to be defeasible it means that (i) it must allow for exceptions, i.e. cases of causing pain, which are not morally wrong or in which pain is not wrong-making (e.g. cases of justified medical treatments where pain is unavoidable or cases of causing pain as part of sports activities); (ii) these exceptions are genuine exceptions in a sense that they are not merely a matter of an imprecise formulation of the underlying norm (e.g. “Unwarranted causing of pain is morally

wrong”); (iii) the set of possible exceptions is open, in a sense that we could otherwise reformulate the norm in a way to include all the exceptions (e.g. “Causing pain is morally wrong except in cases where this is part of justified medical procedure or athletic achievement”); (iv) the initial norm remains the same and retains its normative power even after stumbling upon an exceptional case in a sense that the next time a paradigmatic case of pain-causing pops up it will still render our judgement about its wrongness warranted; and (v) the norm can remain a part of the normative space and can influence our judgment in an indirect way (e.g. if we had two options to perform a given medical procedure, both involving pain but one substantially less than the other, then it would still be part of our judgment about which one is morally optimal).

The conceptual space around defeasibility is usually inhabited by a cluster of related concepts, including that of indeterminacy, vagueness, normalcy, and open-texture. In what follows I wish to focus on the notion of normalcy and see how it helps to elaborate the understanding of defeasible norms.

III. Defeasibility and normalcy

One way to spell out a defeasible nature of a given norm is to state that it only holds in normal conditions. In this vein Celano defines defeasible norms as “defeasible conditionals liable to true exceptions, i.e. conditionals such that the consequence follows, when the antecedent is satisfied, under normal circumstances only” (Celano 2012, 285). Besides utilizing the notion of normalcy authors sometimes use the talk of “privileged conditions”, “typical conditions” (Lance and Little 2007; 2008), *ceteris paribus*, “what standardly happens” (Celano 2012, 284), “paradigmatic” cases or central cases (Celano 2012, 286). The basic idea behind them is the same. A given norm applies only within a set of normal circumstances, while these cannot be explicitly stated and included as additional conditions in the norm itself. This seems to be well in line with the above described relationship between defeasible norms and exceptions, since exceptions represent exactly those cases which fall outside the scope of normal conditions.

In what follows I will focus more closely on two models of defeasible norms that employ such normalcy condition. The first model is proposed by Bruno Celano and is aimed to norms in general although coming from the debate on legal defeasibility. The second model was developed by Mark Lance and Maggie Little primarily for the domain of moral principles, but could also be transposed to norms in general.

Celano (2012) puts forward his proposal as a part of a defence of limited particularism about norms. He begins by considering our response strategies to the possibility of conflicting norms and therefore the need to make an “exception” regarding at least one norm that is involved in this conflict. One of the most obvious and straightforward possibilities for addressing such conflict cases is the specificationist approach. Each time when different legal norms conflict and it seems that we will have to make an exception to at least one of them, the proper way to proceed is to conclude that all “we have to do is specify (that is, suitably restrict the domain of application of) at least one of the norms, or the relevant norm, so that, thanks to the inclusion of further conditions within its antecedent ... the conflict – or the unsatisfactory

verdict – eventually vanishes” (Celano 2012, 270). What we seem to be doing (at least so the approach would say) is enriching, refining, qualifying and grasping subtleties of the initial norm, thus treating it as defeasible. But the problem of this approach lies first in the implausibility of insisting that we are dealing with the same initial norm even after many amendments have been made and exceptions recognized. Secondly there is the in-principle possibility of never being able to specify all the exceptions. “Achieving a fully specified ‘all things considered’ norm, thereby ruling out the possibility of further, unspecified exceptions (apart from those already built into the norm itself) would require us to be in a position to draw a list of all potentially relevant properties of the kind mentioned. And this, we have seen, is misconceived” (Celano 2012, 276). Celano thus instead proposes to look at an alternative, but similar approach to defeasibility that regards exceptions as already implicitly included or provided for by the norm. A specified norm is thus just a sort of shorthand for the more complex norm that lies in the background. But this approach fails for the same reasons since it understands exceptions not as true exceptions – not as real “holes” in the norm – but as some sort of *prima facie* exceptions that allow for the filling in of the holes.

One must thus accept some sort of particularism in order to do proper justice to the (possibility of) norm conflicts and genuine exceptions. In relation to this Celano proposes the above mentioned understanding of norms as defeasible conditionals limited by “normalcy condition”. This is not a full-fledged commitment to particularism since Celano is concerned with what we can call normative flatness worry, in the sense that radical particularism cannot properly account for the thought that some considerations are more central than others, in the sense that we recognize some reasons are “normally” relevant and more central than others.ⁱⁱⁱ That is why he stresses the importance of this “normalcy condition” in relation to his proposal about the defeasible nature of norm. He is well aware that such a proposal is not without problems, but leaves it open and appeals to the work of Lance and Little as providing more details of this model.

I will now turn to this model (addressing specifically moral norms or principles but bearing in mind that similar considerations could be put forward for norms in general). Lance and Little (they defend the model in a series of papers (2005; 2006; 2007; 2008)) are primarily concerned with functioning of reasons, in particular with variability of moral reasons and in relation to that employ a notion of privileged conditions in which a given reason ‘behaves normally’, as opposed to the conditions that are not privileged and where it can vary its moral relevance. The model is clearly committed to variabilism since it incorporates deep moral contextualism: right- or wrong-making, and good- or bad-making features of actions vary with context in ways that preclude codification by exceptionless principles. A full-fledged recognition of exceptions to moral generalisations does not mean that one must accept a picture of morality as being entirely free from any important kind of generalities. The sharp divide between generalism and particularism is a consequence of too strict and narrow views about the nature of explanation. According to these views, genuine explanatory reasons must be governed by universal exceptionless principles.

An alternative model of explanation figuring exceptions is offered, a model that covers non-moral ground as well. Features of such acts as promise-keeping, lying, inflicting pain or being kind are building blocks of everyday morality that entertain an intimate connection with

their moral import (as core moral reasons that can de-flatten the moral normative landscape). They are genuinely explanatory features for the moral status of acts and may be captured within defeasible generalisations. Defeasible principles (e.g. “Defeasibly, lying is wrong; Defeasibly, killing is wrong”, or “Defeasibly, causing pain is wrong”) are introduced through the notion of privileged conditions. A more general formulation of such principles is: “Defeasibly, for all actions x: if x is A, then x is wrong/you should not do x.” or “In privileged conditions, for all actions x: if x is A, then x is wrong/you should not do x.”

Little and Lance argue that some features of acts entertain an intimate connection with their moral import and are genuinely explanatory for the moral status of acts although allowing for exceptions. The same holds for other areas as well. For example, a non-moral generalization “*Fish eggs develop into fish*” is a defeasible generalization. It is not that most fish eggs develop into fish (quite the opposite is true since most of them end up as food for other animals). Something else is captured in this particular generality. One should read it as: “Defeasibly, fish eggs develop into fish.” or “In privileged conditions, fish eggs develop into fish.”, where privileged conditions are defined as conditions that are particularly revealing of the nature of the thing in question or of the broader part of reality in which the thing is known. Such generalizations “mark some explanatory, intimate connection between fish eggs and fish...” (Lance and Little 2008, 62).

If we want to single out a connection between a particular descriptive feature of such act as “causing pain” and between the negative moral import of this feature that is neither necessarily universal nor pervasive or usual, we can do this by saying that defeasibly, causing pain is wrong-making. When a defeasible generalisation faces an exception something has gone off course – the context has relevantly changed in respect to privileged conditions and our moral understanding must track this. There are several types of such defeasibility dynamics, such as the paradigm/riff, justificatory dependence, and idealization/approximation.^{iv} Moral understanding is the understanding of the structure of moral privilege and exceptions. One must understand the nature of a certain feature in privileged conditions and when outside of such a context, the relation of this last context to the first one, the required compensatory moves, and the acceptability of various deviations (Lance and Little 2008, 64-68).

It seems that precisely something like this is needed in order to delimit a set of core moral reasons and de-flatten the moral landscape. One could then claim that considerations such as pleasure, harm, sincerity, justice and benevolence bear an intimate relation to morality, although they are not invariant moral reasons with the same valence in every case and this figure in defeasible moral principles. The moral normative landscape is not flat.

Such proposal of defeasible moral norms either straightforwardly fails to de-flatten the moral landscape or succeeds in this task. I will not pursue the first horn of this dilemma, although there are arguments that shed serious doubts about the success of the project.^v

I am going to presuppose that this model initially succeeds in de-flattening of the moral landscape, i.e. in making a distinction between core (defeasible) and marginal reasons and consequently finding enough so-called defeasible reasons that would function as basic building-blocks of morality. But it seems that this is so only on the cost of collapsing this distinction to a distinction between basic (invariable) and derivative (variable) reasons and thus

limiting defeasibility to the level of middle axioms. In particular the proposed model seems to collapse to a model according to which a given consideration together with privileged conditions delimits some central and invariable moral reason that has full explanatory power. E.g. it is not lying or telling someone something that is not true that is morally central, but honesty, sincerity and deception are. If one looks closer to the proposed examples that Lance and Little offer it does indeed seem that this is the case.

In relation to lying as defeasibly, in normal conditions wrong-making the model refers to examples when lying is not wrong-making, e.g. in the circumstances of Diplomacy game or in circumstances when a Nazi officer bullies you to tell him the location of his next victim. One can understand these in a way that privileged conditions are those that do a lot of the explanatory work why lying is wrong-making in the usual cases, but not in the mentioned ones. This is so since the space of privileged conditions is further shaped with basic moral considerations, comprising of notions such as consent, fidelity, justice, honesty and alike. And it is this large chunk, an invariant moral reason that pops out in an explanation of a moral status of a certain feature and of the whole act consequently. This then just transposes the question whether these background considerations are defeasible or not. (In my overall pluralistic approach I defend the thesis that they are not; cf. Strahovnik 2006.)

If we look closely at some mentioned examples this worry becomes apparent. In the case of lying the model proposed that “intentionally telling a falsehood” is not wrong “when done to Nazi guards, to whom the truth is not owned” (Little, 2001, 34; emphasis mine) or it is not wrong because a particular person is “not worthy of the truth” since “Part of what it means to take something to be a person, we would argue, is to understand the creature as belonging to a kind that defeasibly has a claim on our honesty. Situations in which one takes something to be a person but not worthy of honesty are inherently riffs, as it were, on the standard theme of person.” (Lance and Little 2007, 153, emphasis mine) So, one can say that what actually function as a reason in this and other cases is a combination of a certain feature of action and privileged conditions which make reference to some more basic moral reasons.

Lance and Little anticipate the objection raised here. They say that such a rising on a higher level of abstraction (e.g. from not telling something that is not true to honesty) might seemingly offer us more stable ground and order when it comes to invariability and non-defeasibility of reasons. They respond by claiming that (i) by making this move one loses something important, namely the intimate connection that lying itself has to moral wrongness, that “being a lie” is the main driving force behind such an action being wrong; and (ii) that even a higher or thick moral level is full of exceptions, which are revealed in statements like “it hurts so good” or “sometimes you must be cruel to be kind”. Therefore even considerations such as cruelty are not invariant moral reasons and might figure only in defeasible moral laws.

Ad (i): This first point is crucial for all attempts that combine variability with moral generalities, since they must convince us that what functions as a moral reason in a given case is really variable and that the rest of what a moral principle refers to is not a part of this reason. Regarding an intimate connection between some simple moral reasons and rightness or wrongness of acts, we must ask ourselves what is doing the explanatory work. Maybe we often quote such things as “telling a lie” or “keeping one’s word” as reasons, but if privileged conditions for such considerations encompass such things as honesty, sincerity and fidelity,

one can put forward a questions of their role. When privileged conditions change into non-privileged these considerations are exactly the ones that we employ in our explanation of why a case is deviant or defective from the standard one. And it further seems that they are not just functioning as enablers and disablers of initial reasons. Ad (ii): Most of such talk must be understood as metaphorical. If we sometimes must be “cruel in order to be kind” then it is most probably not the cruelty itself that makes our action kind or be the ground of its moral rightness. Let’s imagine a more detailed case. Let’s say that I have to give my friend an honest opinion about her project or action, and that I know that this would be painful for her. In this sense I will be cruel to her or brutally honest, but at the same time this being the only way to convince her into giving up some actions and maybe spare her future disappointments and pains. In this sense we can say that I had to be cruel to be kind. Nevertheless “cruelty” involved here is not a reason that contributes to the moral rightness of my action. If there was a way to convince my friend that wasn’t cruel but just “plainly kind”, then it would be morally wrong or even terrible to pick the first option. We can never be cruel just to be cruel and morally get away with this. Another way to respond to the case like this would be to claim that the question of cruelty simply does not arise at all since this is not a case of cruelty. Similarly, for “it hurts so good” that Lance and Little appeal to in order to establish variability of pain as a reason and provide an example of pain as a part of the athletic achievement or pain example in the quote from Nussbaum at the beginning of the paper. All this reduces the question of moral defeasibility to the question of basic moral norms and their nature.

IV. Conclusion

Despite several differences between the models of legal and moral defeasibility they nonetheless share many important similarities. In this last section I will try to briefly outline conditions for a general model of defeasible norms. Many of the desiderata for such a model were already mentioned at the beginning. The model must allow for genuine exceptions; a defeasible norm must allow for genuine exceptions that can be made in the light of e.g. the specificity of the case in hand. Next, the model must not limit the scope of possible exceptions in a way that it would be possible to list and include them in the principle itself (open-endedness condition). Also, the model must be such as to leave the initial norm intact when we make an exception to it; a defeasible norm must survive beyond this case of making an exception still remaining the same norm as before (identity condition). A defeasible norm must be such as to have a possible normative pull even in exceptional cases (possible relevance condition). And lastly, the model must be able to cover or accommodate legal, moral and all other normative domains, i.e. including but not limited to law, morality, epistemology, aesthetics (cf. Strahovnik 2004), social conventions, and etiquette.

These conditions delimit the scope of possible options for general notion of normative defeasibility. There are several open options how to proceed from here. We have seen that one of the most plausible ones is to specify the formula for a defeasible norm simply with a prefix “defeasibly, ...” and then go on to further specify both general and domain-specific structures of defeasibility. Given the differences between the mentioned normative domains it is not hard to imagine, that there might be some variations in these structures. In the case of legal and moral norms one of the ways, in which the notion of defeasibility would be able to accommodate these conditions and requirements, is by developing an account that

includes an appeal to a wider set of evaluative, axiological or normative background of basic moral and legal considerations. Models of defeasibility developed by Celano, Tur (2001), and Lance and Little are attractive models, but they have to be understood against a background of basic reasons that we appeal to in deciding the relevant case or in our interpretation of a given norm. It seems that no matter how we work out these structures defeasible norms must appeal to some wider set of basic (moral, legal, ...) considerations that lie in the background and illuminate the exceptions. In the domain of moral norms this line of thought would lead towards an appeal to moral pluralism

Such basic values as an axiological background establish the framework for the functioning of individuals and societies alike, whether these frameworks are delineated by morality or by law. In more general terms, we can thus distinguish two fundamentally different views of the “codification” of such a background; on one hand, there is generalism which combines the possibility of codification and a deductive model of normative thought and, on the other hand, particularism which rejects the possibility of the (complete) codification of the field of normativity. The approach, which builds upon the notion of the defeasibility of norms, seems to sit between the two approaches mentioned above. Within it the defeasibility of at least some norms can be interpreted as a consequence of normative pluralism, the possibility of a conflict between fundamental considerations and the richness of the axiological background.

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ⁱ In Plato's dialogue *Statesman*, we can follow the debate between Socrates and a young stranger from Elea on what defines a good statesman, who would regulate public affairs justly, and the conversation also moves to the question of whether it is possible to rule and govern without laws. The stranger, while trying to defend the affirmative answer to this question, proposes the idea that it is better that a "royal man" governs instead of laws, since "[l]aw can never issue an injunction binding on all which really embodies what is best for each: it cannot prescribe with perfect accuracy what is good and right for each member of the community at any one time. The differences of human personality, the variety of men's activities and the inevitable unsettlement attending all human experience make it impossible for any art whatsoever to issue unqualified rules holding good on all questions at all times". He continues by arguing that the one who governs will probably be unable to avoid any general law being put forward, and so one "will lay down laws in general form for the majority, roughly meeting the cases of individuals . . . under average circumstances", but nonetheless both Socrates and the stranger agree that if exceptions to those general norms were to emerge it would be unwise, unjust, or even ridiculous not to correct those cases (Plato *Statesman*, 294a–b, quoted in Schauer 2012, 78). A similar proposal can be found in Aristotle's *Nicomachean Ethics*. "The reason [i.e. that justice and equity are not quite the same thing, and that equity can be seen as a correction of legal justice; n. VS] is that all law is universal but about some things it is not possible to make a universal statement which shall be correct. In those cases, then, in which it is necessary to speak universally, but not possible to do so correctly, the law takes the usual case, though it is not ignorant of the possibility of error. And it is none the less correct; for the error is not in the law nor in the legislator but in the nature of the thing, since the matter of the practical affairs is of this kind from the start. When the law speaks universally, then, and a case arises on it which is not covered by the universal statement, then it is right, where the legislator fails us and has erred by oversimplicity, to correct the omission – to say what the legislator himself would have said had he been present and would have put his law if he had known" (Aristotle *NE*, 1137a–b). Such discussions focus on the relationship between general norms on one hand and particularities and exceptions on the other, but often such understanding of these exceptions is not radical enough since they are understood as a sheer consequence of underspecified or incomplete general norms, which could be in principle somehow avoided.

ⁱⁱ Among others, Dworkin maintains such an optimistic view: "Of course a rule may have exceptions. ... However, an accurate statement of the rule would take [these exceptions] into account, and any that did not would be incomplete. If the list of exceptions is very large, it would be too clumsy to repeat them each time the rule is cited; there is, however, no reason in theory why they should not all be added on, and the more there are, the more accurate is the statement of the rule" (Dworkin 1977, 24–25).

ⁱⁱⁱ The arguments based on such normative flatness worry emerged particularly in the domain of moral theory within the debate on moral particularism as a combined thesis that there are no moral principles (at least of the interesting kind) and holism of reasons, i.e. that the moral import of a given feature of action depends on the context in such a way that we cannot predict its functioning from one situation to another (Dancy 1993). In response to this and related to an initially appealing intuition that morality has to do with principles the "moral flatness" worry was raised in by several authors (McNaughton and Rawling 2000, 273; Crisp 2000, 36; Bakhurst 2000, 167; McKeever and Ridge 2006, 4) and can be summarized in the following way. Given holism of reasons the set of morally relevant features of actions is open, therefore any feature could be morally relevant and can stand as a reason for or against an action. Furthermore – given the particularistic thesis – this set of features cannot be ordered by general principles. But why does morality on the other hand seem to be ordered? Why do we think that the morally central features very often have to do e.g. with causing pain and suffering, sincerity, honesty, keeping of promises, benevolence, dignity, etc.? All that moral particularism can say is that some features are more often relevant than the others and that's it. It cannot capture the idea of them being in a way "central" to morality. The moral landscape is plainly flat. In order to avoid this charge particularism must offer us "some way to distinguish those considerations which normally and regularly do provide reasons of a certain valence (e.g. pain) from those that normally and regularly do not provide reasons (e.g. shoelace colour). For absent some such distinction, particularism threatens to flatten the moral landscape by suggesting that insofar as they might provide reasons all considerations are on par" (McKeever and Ridge 2006, 45). If we try to isolate the fundamental worry, we can recapitulate it in the following manner. Moral non-flatness requirement: Any moral theory must somehow account for the fact that some considerations or features of acts are more central to morality than others. Even Dancy himself has attempted to do that, namely by a combined strategy consisting of (i) a provision that some of the reasons could be invariable in all situation of context (though this invariability not arising out of their nature as reasons, but being merely a sort of contingency) and (ii) by introducing the notion of a default reason ... (Dancy 2000: 137; Dancy 2004, 112–113). Particularism can thus allow for some invariant reasons, like "causing unnecessary pain to an innocent person." These may function invariantly across contexts because of their content and not because they are a special kind of reasons. "That the reason functions invariantly is a clue to how it is functioning here, but in no way constitutes the sort of contribution it makes to the store of reasons here present. In that sense, the invariance of its contribution is not a matter of the logic of such a reason, and failure to treat the

reason as functioning invariantly is not a failure to understand how it functions as a reason" (Dancy 2000, 137). One of the motivations for staying in the generalism camp is the "stubborn intuition" (Dancy 2004) that morality must be ordered somehow, that there must be some sort of principles that unify it. To deal with this issue strong particularism makes an appeal to the notion of a default reason. Default reasons are features of acts that are always morally relevant, unless something goes wrong. Default reason does not need an enabler in order to stand as a reason. Dancy says metaphorically that such features come "switched on" as morally relevant in a particular way.

^{iv} There are cases where a defeasible generalization tracks the paradigm cases, which are in this sense privileged, as it is in the case of "Defeasibly, chairs are things we sit on", and there are riffs of this paradigm as in the case of ornamental chairs. The moral case would be the case of pain as defeasibly bad-making, but not so in the case of athletic achievement. In other cases there is justificatory dependence between privileged and non-privileged cases in a sense that we must appeal to the privileged cases in order to explain and understand what is going on in a non-privileged case (e.g. lying and lying as a part of the Diplomacy game; pleasure and sadistic pleasure). And lastly, there could be idealization-approximation relation, as in the case of ideal gas law $pV = nRT$ and actual behaviour of actual gases and in the moral case that in the Kingdom of Ends (full information, genuine autonomy, basic trust) people are owed the truth. (Lance and Little 2008, 64-73).

^v Especially McKeever and Ridge presented quite forceful arguments in this direction (McKeever and Ridge 2006, 60-72). First, they can label reasons capturable in defeasible generalizations as paradigmatic reasons and others non-paradigmatic. Argument assumes that the best way to capture paradigmatic vs. non-paradigmatic distinction is via explanatory asymmetry account of this distinction employed by Little and Lance. The cases that fall outside privileged conditions are explanatorily dependent on how a particular consideration functions in a normal case when the conditions are privileged. On the contrary, there is no such dependence going the other way. E.g. pain is normally bad or a reason against the act, but not when e.g. pain is constitutive of athletic challenge and accomplishment where it shifts its polarity (Lance and Little 2006, 319). One must understand how normally pain is something bad in order to understand how it functions in the athletic case; but not the other way around. It seems that the proposed model is useful only for reasons that have one valence in privileged conditions and the opposite valence in non-privileged conditions; and is not successful with reasons that sometimes lack moral relevance. "For it will be true of any consideration whose status as a reason can sometimes be defeated that we can adequately understand why it is not a reason here only if we understand how it can be a reason elsewhere. For, to understand why something is not F here we must in general have some idea of how it can be F elsewhere if it can. If this is enough for a consideration to qualify as an instance of asymmetric reasons then any consideration whose status as a reason can ever be defeated will qualify as an instance of asymmetric reasons, and that makes the distinction far less interesting than it first appeared." (McKeever in Ridge 2007, 67) It further seems that some core reasons might be non-paradigmatic and not all peripheral reasons need to be non-paradigmatic.