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## Kantian Dilemmas? Moral Conflict in Kant's Ethical Theory

**Abstract:** This paper explores the possibility of moral conflict in Kant's ethics. An analysis of the only explicit discussion of the topic in his published writings confirms that there is no room for genuine moral dilemmas. Conflict is limited to non-conclusive 'grounds' of obligation. They arise only in the sphere of ethical duty and, though defeasible, ought to be construed as the result of valid arguments an agent correctly judges to apply in the situation at hand. While it is difficult to determine in theory what makes some of them stronger than others, these 'grounds' can account for practical residue in conflict cases and for a plausible form of agent regret. The principle that 'ought implies can' survives intact.

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Any student of the history of philosophy will be aware of the fact that the problems of the past are not always our own. Some questions discussed by earlier generations of philosophers have fallen out of favour. Underlying assumptions have changed to separate them and us. Equally importantly, we sometimes turn to history for help with questions that intrigue us only to find a great philosopher silent. A particularly notable case of this is Immanuel Kant's approach to the problem of moral conflict. Tension between duty and inclination is ever-present in his ethical writings, and he is clearly conscious of the potential for conflict between his ethics of autonomy and revealed religion. In both cases, morality wins outright. But unlike many moral philosophers today he does not seem to take much of an interest in the possibility of conflict within the moral sphere.

In the *Groundwork of the Metaphysics of Morals* and the *Critique of Practical Reason*, Kant presents himself as the champion of ordinary moral thought.<sup>1</sup> In the *Groundwork*, he identifies the supreme principle of morality as a single categorical imperative and defends it against the accusation that it is fantastical. His

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<sup>1</sup> Kant's works will be cited by volume, page and line number of the standard Academy edition (Berlin, 1900ff.). The exception is J. F. Kaehler's manuscript of the early lectures on moral philosophy (*Immanuel Kant: Vorlesung zur Moralphilosophie*. Ed. W. Stark. Berlin, 2004). Unless otherwise noted, translations are my own.

analysis is explicitly tied to what he perceives to be the common, pre-philosophical notion of moral value. There is no indication whatsoever that morality might give rise to conflicts his ethical theory can help us to resolve. All four cases of practical decision making used to illustrate the newly formulated moral principle relate to clashes between inclination and duty, not to conflicts among divergent moral claims. In the second *Critique*, Kant tries to defend the cause of pure practical reason against the threat of ethical empiricism. No principle that rests on any kind of matter – a purpose, an intention, some substantive value – is fit to serve as a moral law. Once again, he argues that there is only one such pure and formal principle, the categorical imperative; and again he fails to investigate the possibility of conflicting moral claims.<sup>2</sup>

There is a temptation<sup>3</sup> to think that the authority of a single moral principle precludes the possibility of moral conflict, but that would be a mistake. A supreme *material* principle that reduces the value of all actions to a simple axiological currency will. A supreme *formal* principle like the categorical imperative may not. In practice, Kant's principle naturally generates a plurality of prescriptions. When I am inclined to throw away my life, pure practical reason tells me to preserve it. When prudential deliberation suggests that it might be to my advantage to make a false promise, pure practical reason rules this out as morally impermissible. When I am tempted to waste my natural talents, pure practical reason instructs me to develop them. When the exclusive enjoyment of my possessions seems an attractive option, pure practical reason demands that I share them with less fortunate human beings. Evidently, a single moral principle can give rise to several distinct duties, and thus potentially to a host of practical complications.

Why, then, does Kant fail to discuss moral conflict in his major ethical treatises of the 1780s? The answer may come as a surprise to those who subscribe to the modern notion of an 'ethical theory' that dominates the debate today. Kant clearly thought that the primary task of moral theory was to help agents to strengthen their moral disposition. This is his official reason why we cannot rest content with formulating the categorical imperative in the first section of the *Groundwork*, i.e. why the transition towards a metaphysics of morals is needed in the second.<sup>4</sup> If so, distractions like inclination and religious belief must be a central concern, whereas conflicts that arise within a thoroughly moral agent can be

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<sup>2</sup> However, the *Critique of Practical Reason* occasionally refers to the possibility of moral conflict as Kant explains the application of his moral philosophy in the Doctrine of Method; see e.g. V 159, discussed in Section 3 below.

<sup>3</sup> See Marcus 1980, 125.

<sup>4</sup> See e.g. IV 389.36–390.18 and IV 404.37–405.35; cf. the Sulzer footnote at IV 411. The concrete practical purpose of the metaphysics of morals is often overlooked.

set aside, at least for the time being. If at all, the topic of moral conflict will be addressed later, once the supreme principle of morality has been firmly established.

In fact, the *Metaphysics of Morals* confirms that Kant was not altogether blind to difficulties generated by the categorical imperative. The *Doctrine of Virtue* contains many so-called ‘casuistical questions’, some of which concern apparently incompatible moral obligations. Yet our hopes of finding these conflicts systematically discussed are once again disappointed. Kant never provides a detailed analysis. For the most part, we are left wondering what the Kantian answer is meant to be. It is natural to suppose that Kant himself was sometimes uncertain which option to choose. Not only does he leave these conflicts unresolved, he does not even pretend to possess a precise and reliable method for defusing them. He does not employ the categorical imperative. At best, his tone of voice may indicate his preferred solution.

However, the general introduction to the *Metaphysics of Morals* contains a paragraph that is much more interesting than any individual casuistical question. The passage (VI 224.9–26) is the only explicit theoretical discussion of the possibility of conflicting moral claims in Kant’s published works. It consists of four sentences, which represent four distinct argumentative steps. Kant first defines the notion of a conflict of duties or obligations. He then explains why such conflicts are conceptually impossible. In a third step, he concedes that there can be conflicts of so-called ‘grounds’ of obligation, though not of actual obligations. Fourthly, he concludes that in cases of conflict the stronger ground of obligation wins.

While the general structure of the argument is clear, the details are not. Let us examine each of the four sentences separately.

## 1 A Conflict of Duties and Obligations?

Kant’s opening sentence is not as harmless as it might seem:

[1] A *conflict of duties (collisio officiorum, s[ive] obligationum)* would be that relation between them by virtue of which one of them would invalidate the other (wholly or in part).<sup>5</sup> (VI 224.9–11)

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<sup>5</sup> It is curious that Kant should add a parenthetical remark to the effect that, in a conflict of duties, one duty would “annul” (*aufhöbe*) the other “wholly or in part” (*ganz oder zum Theil*). Why does he consider the *partial* cancellation of a duty at this stage of the argument? Is he anticipating the possibility that parts of insufficient ‘grounds of obligation’ (VI 224.19, see [3]) survive a conflict of two such grounds? Or is he indirectly indicating that, because of the inherent necessity explained in [2], duties and obligations cannot be compromised at all, not even in part?

Why should a 'conflict of duties' be defined in terms of one duty's being rendered invalid by another duty?<sup>6</sup> Anyone familiar with recent philosophical contributions on the topic of moral dilemmas<sup>7</sup> would expect such a conflict to be brought about by the *co-existence* of two incompatible commands, both of which continue to exert their claim on the agent. Why does Kant fail to mention this kind of ethical complication? Did the possibility of genuine dilemmas not even occur to him? The first step seems far too quick.<sup>8</sup>

The answer detaches Kant's argument even further from the modern debate. Parallel passages in various sets of lecture notes dating from the mid-1770s to the early 1790s reveal that he had a specific target in mind: Alexander Gottlieb Baumgarten (1714–62), the author the *Initia philosophiae practicae*, which was the set text for his lectures on moral philosophy.<sup>9</sup> In the *Initia*, Baumgarten unashamedly speaks of obligations that differ with regard to their normative force. Depending on the strength of the *causa impulsiva* that generates it, there are major and minor, stronger and weaker obligations (§ 16). There are, accordingly, 'collisions' of obligations. Baumgarten adds the qualification that the strongest obligation assumes the status of a 'true obligation'. Such true obligations (*verae obligationes*) never collide (§ 23).

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6 Note that Kant does not explain or defend this definition. Beginning with the words 'but since', sentence [2] swiftly proceeds to explain *why* a collision of duties or obligations, as defined in [1], is impossible.

7 In what follows, I shall restrict the term 'dilemma' to conflicts of objective ought statements, the inevitable violation of one of which leads to a justified sense of remorse, guilt or self-reproach in the moral agent. (There is no assumption, though, that dilemmas have to be 'symmetrical', i.e. that there is nothing that allows us to break the initial tie between the two considerations involved.) Kant's ethical theory does not allow for moral dilemmas in this sense.

8 To my knowledge, the only interpreter who notices the peculiarity of Kant's initial definition is Allen Wood. He rightly remarks that the passage addresses only cases "in which one duty might so come into conflict with another as to 'cancel' it". But the conclusion he draws from this is too strong: "Thus Kant does not necessarily disagree with those who insist that there can be real 'moral dilemmas,' because their claim is that there can be conflicting duties that do not 'cancel' others (but instead give rise to 'moral costs,' or to other duties)." (Wood 2008, 163) The subsequent argument at VI 224.11–18, which relies on the notion of moral necessity not the 'ought' of modern deontic logic, can be employed to reject moral dilemmas too. If Kant does not explicitly dismiss the possibility of moral dilemmas at IV 224, the reason is that they were not contemplated by Baumgarten, not that he wanted to retain them as a philosophical option.

9 Baumgarten was continuing a discussion initiated by Christian Wolff in his *Deutsche Ethik* of 1720. This is important because Baumgarten's (and Wolff's) rationalism helps to explain why a genuine conflict of two persisting duties is never seen as a real possibility. For a brief historical account of the theory of collisions of duties in the 18th century, see Annen 1997, 200–207.

Already in his early lectures on ethics, of which the best version survives in a manuscript by Johann Friedrich Kaehler, Kant rejects conflicts of obligations outright. His target is the author of the textbook, i.e. Baumgarten:

Author: obligations can be larger and smaller, and can conflict. But obligations cannot conflict, for where something is morally necessary, no other obligation can make the opposite necessary. (Kaehler, 35.26–30)<sup>10</sup>

The late Vigilantius lecture notes on the metaphysics of morals contain passages that closely resemble what Kant committed to print a few years later. In Vigilantius, an ‘antinomy of moral laws’ (*antinomia legum*, XXVII 537.10) is dismissed for essentially the same reasons as in the published *Metaphysics of Morals* of 1797.<sup>11</sup> The target remains Baumgarten, who – like Wolff before him – explicitly dubs a collision of incompatible moral laws an ‘antinomy’ (*Initia*, § 85), and goes on to distinguish ‘true’ and ‘apparent’ antinomies. For reasons that will soon be evident, Kant took exception to this.<sup>12</sup>

Like so many other parts of the *Metaphysics of Morals*, Kant’s repudiation of the possibility of conflicting duties at VI 224 is based on earlier lecture notes and can be traced back to the impetus of the textbook he had to engage with. He is not addressing the question of moral conflict in its own right. Rather, he is dismissing the rationalist conception of moral conflict he found in Baumgarten, and the loose talk of more or less binding obligations that tends to be the result.

## 2 Duties and Obligations Cannot Collide

Kant then seeks to explain why, *pace* Baumgarten, one duty cannot be overcome by another (or, for that matter, by anything else). The lesser duty would have to cease to exist, but a duty cannot cease to exist because it is a matter of necessity,

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**10** NB: a quick look at § 18 of Baumgarten’s *Initia* proves the Academy text of Collins to be corrupt. According to Collins, “obligations can be larger and smaller, and cannot conflict, for where something is morally necessary, no other obligation can make the opposite necessary” (Cambridge translation of XXVII 260.36–261.1). The copyist must have skipped a line.

**11** At VI 224.9, Kant uses the standard German term for antinomial conflict, *Widerstreit*. See also Vigilantius, XXVII 493.1–14 and 508.16–33, for two other passages that closely correspond to the official version at VI 224.

**12** Cf. Kant’s reaction in the Kaehler lectures, 76.4–8, quoted in Section 3 below.

and what is necessary cannot be vanquished.<sup>13</sup> The argument is laid out in the second sentence:

[2] But since duty and obligation are concepts that express the objective practical *necessity* of certain actions, and two rules opposed to each other cannot both be necessary at the same time<sup>14</sup> – rather if it is one's duty to act according to one of them, to act according to the opposite one is not only no duty, but even contrary to duty – a *collision of duties* and obligations is not even conceivable (*obligationes non colliduntur*). (VI 224.11–18)

The thought that duty makes an action necessary is a familiar one: The project of the *Groundwork* rests on the premise that only an a priori theory of the foundations of morality can account for the unrelenting normative force of moral principles (IV 389.11–23). In the 'third proposition' in Section I, duty is defined as "the necessity of an action from respect for the law" (IV 400.18f.). This law turns out to be the one contained in the command always to act in such a way that at the same time one can will one's maxim as a universal law (IV 402.8f.), officially christened the 'categorical imperative' in Section II. It is not because an agent desires this or that end that he ought to perform a certain action: moral action is required unconditionally by the law *as such*. The necessity of duty is reflected in moral consciousness. In the *Critique of Practical Reason*, this conviction is called the 'fact of reason'. By contrast, actions commanded by hypothetical imperatives are contingent twice over. They depend, first, on the presupposition of an end the agent intends to realise – without an end they contain mere descriptive regularities without prescribing any actual conduct. Secondly, they depend on the availability of suitable – and morally permissible – means. That is why hypothetical imperatives do not qualify as practical laws.

Duty renders any conflicting inclination-based consideration, whether immediate or long-term, normatively invalid. The obligatory act is objectively necessary; any other action is rationally impossible.<sup>15</sup> What is more, if duty really makes

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**13** Note that this passage has no bearing on the question of whether there are genuine ties of two or more moral claims of equal weight (which may require a fair allocation procedure, or leave the choice at the agent's discretion). However, Kant is committed to the view that symmetrical cases can arise only among 'grounds' of obligation within wide duty (if at all). As we shall see below, this helps to make them less severe.

**14** *Zugleich*, which is less obviously temporal than 'at the same time'. Adkins dismisses the temporal reading (Adkins 1999, 459f.). But whereas it is slightly odd to speak of two abstract rules of duty as being necessary at the same time, concrete obligations *are* temporal in a way that duties are not (particularly if they concern the advancement of ends the agent ought to have adopted on moral grounds, see below).

**15** However, this does not deprive the option favoured by inclination of its subjective attractiveness. (That would render immoral action impossible or at least inexplicable.)

one action practically necessary one must consider *all* other actions illegitimate, not just those that are grounded in the sensuous side of human nature. Kant thus argues on conceptual grounds that of two contradictory commands only one can be one's duty. Therefore, duties cannot conflict.

This is the standard interpretation of sentence [2]. It is not wrong, but it oversimplifies an admittedly dense argument. There is one important clue that most readers overlook: speaking of opposing 'duties', Kant is thinking of *general* commands or duty *types*, as indicated by his use of the word 'rule' (*Regel*) at VI 224.14.<sup>16</sup> His interest in types of duty is explicit in the parallel passage in *Vigilantius*, where a "conflict of duties amongst themselves" is defined as a collision either of 'laws' of strict duty or of 'rules' of wide duty (XXVII 537.10–13).<sup>17</sup> A moral theory must be internally consistent, and two requirements that contradict each other cannot both be necessary and universal without restriction. For example, the ethical duties of openheartedness and reticence cannot both apply universally and unconditionally.<sup>18</sup> Similarly, it would be peculiar if an ethical theory were to tell us always to support others in need and never to interfere in other people's lives, though there is much to be said for both helpfulness and respect of the freedom of others. Most philosophers would admit that a moral theory should not be committed to two unrestricted moral laws conflicting in this manner. *Vigilantius* concludes that "laws and rules could not be universal and thus necessary if the opposite were not impossible: consequently, two general duties [*zwei allgemeine Pflichten*] cannot contradict each other" (XXVII 537.13–16).

However, even if Kant reserves the term 'duty' (*Pflicht*) for general laws or rules, we can re-run the argument along the lines initially suggested to dismiss conflicts at the token level of what is to be done in particular circumstances.<sup>19</sup> This is probably why in sentences [1] and [2], but not in [3] or [4], Kant tends to speak of, in Latin or in German, 'duties and obligations'. 'Duties' are general

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<sup>16</sup> Whereas there is a worthwhile question as to whether the rule at VI 224.21 (passage [3] below, "the rule he prescribes to himself") is subjective or objective, i.e. the rule contained in a moral imperative or a maxim, in the present passage 'rules' clearly refers to objective standards. These are the rules that contain the "objective practical necessity" (VI 224.12f.) of actions we subsume under them. At level [2], the subjective, agent-related side of action is not yet in focus. Also, the sense of 'necessity' employed throughout is objective rational necessity, as opposed to subjective necessitation, i.e. an agent's sense of his obligation.

<sup>17</sup> See also R 7259: "A law must leave nothing to choice but determine with precision. A rule that determines broadly is not a law [*Regula late determinans non est lex*]" (XIX 296); and *Moral Mrongovius* II, XXIX 633.12–24 (quoted in part in Section 3 below).

<sup>18</sup> They are both restricted by an unconditional duty of truthfulness, see VI 433 fn.

<sup>19</sup> See *Moral Mrongovius* II, XXIX 614.14–31, which contains an argument immediately directed against conflicts of *obligations*.

prescriptive laws or rules that provide the matter of what ought to be done. 'Obligations' are individual cases of being morally bound to do something.<sup>20</sup> Admittedly, Kant does not consistently distinguish between *Pflicht* and *Verbindlichkeit*, and they may serve as stylistic variants here.<sup>21</sup> But the distinction between duty and obligation was drawn at VI 222.31–34, a mere two Academy pages previously. It would be unfortunate – if by no means unheard of – if Kant were to ignore his own terminology so soon after its introduction. So, if Kant does use the distinction in sentences [1] and [2], token obligations will have to be as unambiguously necessary as general commands of duty.

### 3 Grounds of Obligations, and How They Conflict

Having ruled out conflicts of duties and obligations in the second sentence, Kant tries to make room for a certain kind of moral conflict in the third:

[3] However, two *grounds* of obligation (*rationes obligandi*), one or the other of which does not suffice to obligate [*zur Verpflichtung nicht zureichend ist*]<sup>22</sup> (*rationes obligandi non obligantes*), can be combined in a subject and the rule he prescribes to himself, but in that case one of them is not his duty. (VI 224.18–22)

The notion of a 'ground of obligation' introduced at this point is the key to understanding the type of conflict Kant is happy to accommodate. Crucially, there are several texts that locate *rationes obligandi* in the sphere of ethical duty.<sup>23</sup> One is a brief note on § 85 of Baumgarten's *Initia* in Kant's early lectures on moral philosophy:

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**20** One might, in Aristotelian terms, call duty and obligation the 'what' and the 'that' of morality respectively.

**21** This is Richard McCarty's view, who is unique in addressing the matter at all (see McCarty 1991, 77). McCarty is right that Kant's distinction between an obligation of virtue (*Tugendverpflichtung*) and a duty of virtue (*Tugendpflicht*) at VI 410.21–26 does not really help us with the paragraph at VI 224 – Kant's point is that virtue includes duties of right as well as duties of virtue – but he overlooks VI 222.31–34, which does. McCarty instead proposes his own distinction between duties and obligations, roughly along Kantian lines (see McCarty 1991, 68).

**22** I am assuming that Kant is using *Verpflichtung* and *Verbindlichkeit* interchangeably here. Both are glossed *obligatio* in Latin. In the present passage, he uses the expressions *Grund der Verbindlichkeit* and *Verpflichtungsgrund*, whereas *Pflichtgrund* or *Grund zur/der Pflicht* are notably absent.

**23** The restriction of 'grounds of obligation' to wide duty is one of the central claims of this paper. To the best of my knowledge, the only scholar who comes close to acknowledging it is Bruce Aune: "Given this passage, we might say that when some particular action contributes to an obligatory end and is morally permissible, there is a ground of obligation for performing it" (Aune 1979, 191). However, Aune does not examine other related passages, and he ultimately rejects this idea on



An antinomy or conflict can occur among laws if they merely enunciate the ground of obligation [*Grund zur Obligation*]; but if they obligate by themselves they cannot conflict. (Kaehler, 76.4–8; cf. Collins, XXVII 280.31–34)

Another can be found in the second set of C. C. Mrongovius' lecture notes on moral philosophy:

If a moral rule contains merely grounds of action (*rationes obligandi sed non obligantes*), then these are laws that possess latitude. (XXIX 633.19–21)

These brief statements should be read in conjunction with a second, much more comprehensive passage from the Doctrine of Method of the *Critique of Practical Reason*:

The method thus takes the following course. *At first* we are just concerned with making judging actions by moral laws a natural occupation and, as it were, a habit that accompanies all our own free actions as well as our observation of those of others, and with sharpening it by asking first whether the action objectively *conforms with the moral law*, and with which law; by this, attention to that kind of law which provides merely a *ground* of obligation is distinguished<sup>24</sup> from that which is in fact *obligatory* (*leges obligandi a legibus obligantibus*) (e. g. the law of what the *need* of human beings requires of me, as contrasted with what their *right* requires, the latter of which prescribes essential duties, whereas the former prescribes only non-essential duties), and thus one teaches how to distinguish different duties that come together in one action. (V 159.18–31)

Kant therefore distinguishes between two very different kinds of moral law.<sup>25</sup> The *strict* type (*leges obligantes*) obligate immediately, i.e. by themselves they give us

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philosophical grounds: “Though Kant seems to speak of ‘conflicting grounds of obligation’ only in connection with duties of virtue, the problem is really a general one that arises equally for duties of justice” (Aune 1979, 195). That may be true, but it was not Kant’s view of the matter.

24 With reference to this distinction, the Jena scholar Carl Christian Erhard Schmid (1761–1812) enquires about the topic of ‘unremitting’ or ‘unrelenting’ (*unerlaßliche*) and ‘relenting’ (*erlaßliche*) duty in a letter dated 21 February 1789 (No. 343, XI 1), and about the manner and degree to which they obligate. He expresses the hope to receive from Kant some instruction in these matters, which should “not be too time consuming”. Unfortunately, there is no reply. For a comprehensive historical overview of the two types of obligating law, see Kersting 1982.

25 V 159 strongly suggests that essential and non-essential duties are duties of right and duties of virtue respectively. This is confirmed by an unpublished draft or *Vorarbeit* for the *Metaphysics of Morals*: “Duties are either of strict or of wide determination; the former immediately stand under the law of actions, the latter under the law of the maxims of actions (which thus leave some playroom for choice [*einen Spielraum für die Willkühr*]). The former are perfect duties (duties of right), the latter imperfect duties, i.e. duties of virtue.” (*Vorarbeiten*, XXIII 384.25–29). For what follows, see the canonical distinction between duties of right and duties of virtue in the *Metaphysics of Morals*, VI 388–391.

sufficient reason to act in a certain way. These laws are necessary and strictly universal. In accordance with his distinction in the *Metaphysics of Morals* a decade later, Kant seems to have juridical duties (duties of right) in mind.<sup>26</sup> The standard case is the law not to make lying promises in matters of contract, e.g. when obtaining a loan from a friend or a bank. Just by itself, this law constitutes an absolute prohibition of fraudulent promises, irrespective of the desires, projects or purposes of the agent. Crucially, laws of this kind are traditionally conceived as strict negative laws of omission:<sup>27</sup> they do not concern the promotion of some positive end, and they are universally binding in the sense that they do not rely on the specifics of the agent's circumstances to apply. As a consequence, we can comply with several strict prohibitions at the same time: not to steal, not to murder, not to make fraudulent promises, and so forth. This helps to explain why duties of right are meant to be valid without qualification. It is difficult to see how there could be conflicts at the practical level if – see above – the body of such prohibitive laws is internally consistent.<sup>28</sup> Moreover, as a wrong is done, and suffered, only when a duty of right is transgressed, Kant has ruled out the possibility of unavoidable rights violations in cases of conflict.

By contrast, the *wider* type of laws (*leges obligandi*) merely provides us with – defeasible – grounds or reasons when applied correctly to particular circumstances. These duties are ethical duties (duties of virtue). They instruct us to adopt morally good ends by incorporating them into our maxims and to advance them in practice when the occasion arises. Ethical duties are imperfect and 'conditional' in that they apply only when the action does not violate a command of strict juridical duty – duties of right enjoy lexical priority.<sup>29</sup> They are, moreover,

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**26** Where are perfect duties to oneself to be located? Bernd Ludwig has recently argued that they are duties of right that do not permit of external coercive legislation, and hence like duties of right to others only indirectly ethical (see Ludwig 2013). This reading makes good sense within the present reconstruction of VI 224.

**27** Cf. e.g. *Moral Mrongovius* II, XXIX 632.25f.: "Juridical laws are actually mere duties of omission. The sphere of right contains merely negative duties [*Das ganze Recht hat bloß negative Pflichten*]."

**28** Difficult, but not impossible. Joachim Hruschka has demonstrated that there can be conflicts of negative duties, despite the fact that eighteenth-century legal theorists – including Kant – typically ignore them (Hruschka 1991). Moreover, this doctrine relies on a clear substantive distinction between (positive) acts and (negative) omissions, which may not be forthcoming. Is there a duty not to break a promise or a duty to keep it? – For a discussion of the passage in the context of legal philosophy, see Joerden 1997.

**29** See *Theory and Practice*, VIII 300 fn., for a clear statement of how conditional duty is restricted by unconditional duty, e.g. and the unconditional prohibition of killing an innocent person even if that is the only way to preserve my life (conditional duty, "when it can be done with-

contingent<sup>30</sup> in the sense that to acquire relevance they depend on several conditions. If no one requires my support, or if for whatever reason there is nothing I can do to help someone in need, I am under no obligation to be beneficent.<sup>31</sup> Ethical duties in the abstract are insufficient to command determinate action. If we are trying to make room for moral conflict in Kant's moral philosophy we should therefore take a closer look at obligations within this wider class of duty, which is based on laws that fail to obligate immediately and without restriction.<sup>32</sup>

It is not difficult to see how the contingency of wide obligation should lead to moral predicaments.<sup>33</sup> In a given situation, two or more ethical duties can be relevant simultaneously. If so, two incompatible actions may both seem obligatory at first. It is also possible for two mutually exclusive courses of action to fall under the same ethical duty. Now, we know that ultimately only one of these options can be obligatory, i.e. morally necessary. But there is no reason why Kant should reject the idea that there is something to be said for two (or more) *de facto* incompatible prescriptions if they follow from moral laws correctly applied. After all, either course of action would be morally required in the absence of moral (or other) impediments. The weaker ground of obligation is not invalid, even if on this occasion it does not translate into an obligation proper. When for contingent reasons I can act on only one of several morally relevant considerations, the result may be a genuine if limited case of moral conflict. This means that there can be cases of unavoidable harm.

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out a crime"). Kant explains that certain actions may not be legally punishable, but they are still wrong. Cf. *Metaphysics of Morals*, VI 235f. on *ius necessitatis*.

**30** Calling wide or imperfect duties 'contingent' has an air of paradox about it because any *token* obligation is, of course, just as necessary as the other. The expression (*zufällige Pflicht*, IV 430.10) occurs in Kant's discussion of the Formula of Humanity in the *Groundwork*, where strict or perfect duties are equally problematically dubbed 'necessary' (*notwendige Pflicht*, IV 429.15, 29). The change of terminology is due to Kant's change of focus from form (laws) to matter (ends).

**31** Following the rationalist tradition, Kant sometimes succumbs to the temptation to deny wider commands like beneficence the status of a moral *law* altogether.

**32** The above-mentioned fact that Kant speaks of 'duty' and 'obligation' in passages [1] and [2] only would also seem to support the thesis that the conflict envisaged in passages [3] and [4] concerns the level of token obligation. VI 224.22 is no exception. At VI 224.15 and elsewhere, *ist Pflicht* is one of Kant's standard expressions for 'obligatory'. It concerns particular actions and does not indicate that an action type is 'a duty', as the standard translation seems to imply.

**33** There is, of course, no 'conflict of wide duties', even if we grant that the laws of wide duty are not necessary and universal in the same unconditional sense. When they apply they command with the force of practical necessity and silence the claims of inclination. That is why there can be no conflicting obligations of the wide or imperfect variety either.

To illustrate this point, consider an example mentioned by Vigilantius in his notes on Kant's lectures on the metaphysics of morals. There is, he says, a general duty of beneficence as well as a general duty to care for one's own family (XXVII 537.6–8). These are not strict juridical duties, and neither is sufficiently strong to generate token obligations. What is more, these duties are not incompatible at a general or theoretical level, i.e. there is no 'collision of duties'<sup>34</sup> in sense discussed above. Vigilantius is describing a case of two duties that collide not in principle, but accidentally in practice, i.e. when the agent is exposed to two different but valid and applicable laws while lacking the means to comply with both. As obligation carries with it the force of necessity, there is no conflict of obligations. It is a conflict of grounds of obligation or *rationes obligandi*. In the present case, the duty to look after one's family is declared to furnish the superior ground.

Let us try to get a clearer picture of what kind of creature a 'ground of obligation' is meant to be. Kant's concession that there can be conflicting grounds may appear to be a trivial move, necessitated by his rationalist desire to rule out conflicts of actual duties or obligations. To make things worse, he says little to clarify the concept.<sup>35</sup>

Two philosophical accounts have been put forward on Kant's behalf.<sup>36</sup> In her "Obligation and Performance", Barbara Herman rejects the view that grounds of obligation are Rossian *prima facie* duties.<sup>37</sup> Instead, she argues that they are *facts* that may or may not give rise to token obligations. This looks like a reasonable suggestion. We have already seen that facts, such as the conditions in which human beings find themselves, play a decisive role in the generation of wide obligations. Moreover, the thesis that facts are reasons to act, to feel or to believe has many prominent supporters in moral philosophy today. According to Herman, the ground of obligation for the duty of beneficence "is the fact that we are dependent beings, a fact that is salient in an agent's circumstances of action through the claim of need"; for the prohibition of deceit, the "conditions of the integrity of the will". In general, grounds of obligation are declared to be "facts of a certain sort" (Herman 1993, 167). But Herman's interpretation cannot be right.

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<sup>34</sup> Despite the fact that these exact words are used to describe the situation at XXVII 537.8. In the lecture notes, Kant is still partially operating within the traditional rationalist framework.

<sup>35</sup> This is a common complaint; cf. McCarty 1991, 67.

<sup>36</sup> For three additional (and rather fanciful) interpretations see Adkins 1999, 460–462.

<sup>37</sup> A reading advocated by Onora O'Neill in *Acting on Principle* (Nell 1975, 133); for a discussion of O'Neill's early view see McCarty 1991, 75f. One difficulty with O'Neill's early view is the well-known fact that the notion of a *prima facie* duty is itself problematic. But there is some truth in her analysis. As we shall see below, grounds of obligations are *pro tanto* normative reasons that, in conjunction with instrumental reasoning, generate specific *prima facie* prescriptions.

It can be refuted on philosophical as well as exegetical grounds. Facts of the kind she has in mind – though prominent in the deliberative process – are not sufficient to ground obligations. Moreover, it is difficult to see how these facts by themselves could come into conflict with each other, as Kant says grounds of obligation do. (Herman acknowledges this difficulty.) Facts are factual. Kant's *rationes obligandi* must be action guiding and prescriptive. Moreover, Herman's reading cannot account for the fact that Kantian grounds of obligation arise only for ethical or 'non-essential' duties, but not for 'essential' duties or duties of right. On her view, strict and wide obligations alike are grounded in facts.

The most significant exponent of the alternative interpretation is Onora O'Neill. In "Instituting Principles", she rightly rejects Herman's analysis of grounds of obligation as facts. According to O'Neill, grounds of obligation are 'obligating reasons'.<sup>38</sup> Like general rules or principles, obligating reasons are normative. (Herman's facts are not.) But unlike general rules or principles they "can be those of some particular agent in a particular context", which "brings out the agent-related character of these reasons" (O'Neill 2002, 342). The results of our analysis so far support O'Neill's proposal. An 'obligating reason' is precisely the kind of normative entity needed to make Kant's theory of limited moral conflict work. The problem with her suggestion is that 'obligating reason' is little more than the English translation of Kant's own – German or Latin – terms,<sup>39</sup> and therefore equally elusive. More needs to be said to understand what obligating reasons are, when they arise, and how they operate.

This should not be too difficult. Grounds of obligation are not just objective ethical principles. Nor are they facts about human beings or the world they live in. In isolation, neither ethical principles nor facts generate action prescriptions that can collide. For conflict, principles and facts have to come together. In particular, a ground of obligation arises when an agent correctly applies an ethical principle to a concrete case. This ground, though genuine, can still fail to produce an actual obligation if the agent lacks the means to further the ethical end in question, e.g. because of some physical, psychological, or moral impossibility. Taking beneficent action can conflict with strict duty (one has to commit fraud or murder to procure the means), with a stronger ground of wide obligation (one has to ne-

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**38** Richard McCarty also takes 'grounds of obligation' to be 'obligating reasons'. He glosses them as "reasons why an act is obligatory", and correctly suggests that relevant facts together with a general duty "constitute grounds for an obligation to act" (McCarty 1991, 67f.). In a similar vein, Allen Wood takes grounds to be 'obligating reasons', adding that they are "the grounds or reasons why we have a duty or obligation" (Wood 2008, 163). Of course, neither O'Neill, nor Wood, nor McCarty restrict the scope of these grounds to wide or ethical duties.

**39** *Grund* is the standard German word for 'reason' in English, of which *ratio* is the Latin root.

glect one's nearest and dearest to help a stranger), or with physical or psychological incapacity to obtain the means (administering some drug would cure a patient but it is locked away, or too repellent to be administered). In none of these cases is there an obligation to assist, not because there is no case to be made for helping the person, but because the requisite means are not at the agent's disposal. By contrast, when a ground is *not* curtailed by impossibility, he will be obligated to act.<sup>40</sup> Grounds of obligation are obligating reasons that result from correct if inconclusive moral arguments.<sup>41</sup>

We need to clarify two points before we turn to the final sentence of Kant's argument. First, Kant occasionally employs a less restrictive use of the phrase 'ground of obligation'. According to the alternative terminology, there are two distinct types of reason, one decisive in the sphere of strict duty and one defeasible in the sphere of wider duty. *Rationes obligandi* – as opposed to laws as direct *rationes obligantes* – are then associated with moral rules that cannot be proper principles because they do not bind immediately or absolutely, i.e. with rules of ethical duty.<sup>42</sup> But this distinction does not change the substance of Kant's argument. It is merely a terminological variation of the theory of conflicting grounds as discussed at VI 224.<sup>43</sup>

Secondly, what is the significance of the statement that two reasons can "be combined [*verbunden sein*] in a subject and the rule he prescribes to himself" (VI 224.21)? As we saw above, it is likely that in sentence [2], at VI 224.14, Kant uses the word 'rule' to refer to objective moral laws, which may seem to indicate that he is thinking of an autonomously imposed *objective* rule seven lines further down at VI 224.21. However, a 'maxim' is defined in very similar terms as "a rule that the agent himself makes his principle on subjective grounds" just a couple of lines further into the text (see VI 225.2f.).<sup>44</sup> This suggests that the 'rule' in [3] is a maxim,

<sup>40</sup> I shall return to the principle that 'ought implies can' in the final section of this paper.

<sup>41</sup> Kant returns to the concept of a ground of obligation only once in the *Metaphysics of Morals*, at VI 403.10–404.2, where it is closely linked to the notion of *proof*.

<sup>42</sup> See e.g. R 5235 (ca. 1776–78), which dismisses conflicts of obligation along the lines of the *Metaphysics of Morals*: "All laws are always without exception, even if not without restriction, if they merely contain *motiva obligandi* and not *obligantia*" (XVIII 127.19f.). *Motivum* – the German *Bewegungsgrund* – is a stylistic variant of *ratio* (*Grund*). The same distinction is at work in *Moralphilosophie* Powalski, see XXVII 142.8. R 6721 similarly distinguishes between two kinds of *motiva moralia*: those that concern the form of duty (*motiva obligantia*) – and those that concern its matter, i.e. the end pursued (*motiva obligandi*), in other words, strict and wide duty respectively (XIX 140f.).

<sup>43</sup> The expression *rationes obligandi non obligantes* at VI 224.20 can be interpreted to refer to this distinction.

<sup>44</sup> Similarly, Kant calls maxims 'self-imposed rules' (*sich selbst auferlegte Regeln*) in Section II of the *Groundwork*, IV 438.24.

not the law contained in the categorical imperative or any specific moral law. Moreover, the shift from [2] to [3] marks the transition from the objectivity of abstract morality to the subjectivity of concrete moral action.<sup>45</sup> Repeating the word ‘rule’ in its two different senses rather neatly emphasises the fact that whereas there can be no conflicts between objective rules there can be a conflict of rules within the acting subject.<sup>46</sup> In fact, a conflict of grounds in an objective practical rule would look suspiciously like a dialectic within pure practical reason, which Kant seeks to avoid at all costs. Finally, the objective reading has to interpret the phrase “which he prescribes to himself” as a reference to Kantian autonomy; but so far, autonomy has been notably absent from the *Metaphysics of Morals*, and it is difficult to see how it could be relevant to the argument at VI 224. The ‘rule’ that can contain incompatible grounds is therefore likely to be the agent’s maxim, i.e. a subjective, first-personal principle that informs his concrete practical priorities and commitments.<sup>47</sup>

I shall return to the issue of the subjective implications of conflicting grounds of obligation below. For the moment, let us note that whereas neither (i) strict ‘laws’ of duty nor (ii) wider ‘rules’ of duty nor (iii) token ‘obligations’ permit any kind of conflict, in the sphere of wide duty Kant explicitly allows for the possibility of conflict within the moral subject. Such conflicts do not arise from any theoretical or rational inconsistency but because the agent is conscious of the empirical complexities that arise when he envisages concrete, positive steps to advance a morally required end. There is no room for conflicts that inevitably lead to rights violations, though agents are often unable to do as much good as there is reason to do. This helps to explain the lack of urgency the problem of moral conflict possesses for Kant.

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<sup>45</sup> The idea that there is merely a conflict of or within maxims (not an objective conflict of laws) is also supported by the preliminary notes, see XXIII 389.18.

<sup>46</sup> More specifically, Kant is saying that there can be conflicts not only in an individual agent but also within a single maxim, e.g. the maxim to be beneficent if there are two valid *rationes obligandi*, e.g. if there are two people who need the agent’s help: “in a subject *and* the rule he prescribes to himself” (VI 224.21, italics added).

<sup>47</sup> Here I find myself in agreement with Herman as well as O’Neill, who both take the ‘rule’ in passage [3] to be the agent’s maxim and emphasise the subjective aspects of Kantian moral conflict (see Herman 1993, 167, and O’Neill 2002, 342, respectively).



## 4 The Stronger Ground of Obligation Prevails

In the fourth sentence, Kant formulates his conclusion:

[4] When two such grounds conflict, practical philosophy does not say that the stronger obligation retains the upper hand [*die Oberhand behalte*] (*fortior obligatio vincit*), but the stronger *ground of obligation* retains the field [*behält den Platz*] (*fortior obligandi ratio vincit*). (VI 224.22–26)

What is there to be said about Kant's concluding sentence, other than that it is unhelpfully trivial? Not much, were it not for a mistake introduced into the discussion by Alan Donagan nearly thirty years ago.

In his "Consistency in Rationalist Moral Systems", Donagan argues that Kant is drawing a distinction in this final sentence, between the alleged case of an obligation that retains 'the upper hand' and the actual case of a ground of obligation that retains 'the field':

In describing conflict between grounds of obligation, Kant avoided the metaphor for victorious struggle, namely, 'holding the upper hand,' which he employed in depicting what a putative conflict of obligations would be, and instead represented it as a conflict in which one ground 'holds the field,' while the other, a mere *ratio obligandi non obligans*, simply vacates it, as being inadequate to bind as a duty. (Donagan 1984, 294f.)

The passage is taken as evidence that, once defeated, the inferior ground no longer has any normative force. But Kant intends to make no such distinction. The two expressions are very similar. 'Retaining' or 'holding' the field – i.e. the battle-field or *Kampfplatz* – does not avoid the imagery of victorious struggle, as Donagan suggests. In fact, the Latin verb used to gloss the two phrases is exactly the same in both cases.

Moreover, there is evidence that Kant did not wish to rule out situations in which the weaker ground retains its normative force, i.e. a genuine collision of ethical commitments. Two moral considerations can be simultaneously relevant even if one of them is vanquished. As we shall see below, it is actually one of the strong points of Kant's theory of defeasible grounds of obligation that it can accommodate the phenomena associated with the experience of moral conflict without allowing for moral dilemmas proper, something impossible to achieve within a purely rationalist theory of defeated duty. The introduction of the level of grounds of obligation is much more than merely a terminological correction.<sup>48</sup>

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<sup>48</sup> Donagan's error has been very influential. In "Obligation and Performance", Barbara Herman explicitly adopts Donagan's reading (Herman 1993, 165), as does Martha Nussbaum in *The*



## 5 How to Resolve a Conflict of Obligating Grounds

Does Kantian ethical theory possess the resources to resolve moral predicaments beyond the uninformative statement that the stronger ground wins? If one is hoping for a clear criterion to decide conflict cases the answer is probably no. The *Vigilantius* notes contain the equally casual declaration that “the stronger law wins; if there is a collision of rules the exception affects the lesser one [*lex fortior vincit; regulae si collidunt, a minori fit exceptio*]”. Predictably, *Vigilantius* then states that imperfect duties are defeated by perfect duties, and – more interestingly, and problematically – that several imperfect duties outweigh a single one (XXVII 537.30–33).

The two examples that follow are little more informative. According to the first, the need of another, and if he were about to die, “cannot force me to go into debt” (XXVII 537.33f.). The text of the lectures implies not just that one person cannot be compelled to go into debt on behalf of another, but that it is morally impermissible to borrow money. This is presumably a case in which perfect duty curtails the grounds of imperfect duty. It echoes the case previously used to illustrate a conflict of insufficient grounds of obligation: that of a friend in need when my money is already earmarked for repaying a debt.<sup>49</sup> *Vigilantius* adds the usual Kantian complication that the creditor is wealthy and does not need the money urgently, that it would not harm me if I did not repay the money now, but affirms that it is still easy to decide which consideration loses its weight: “duty decides”, *die Pflicht entscheidet* (XXVII 537.18–28).<sup>50</sup>

The second example is likely to resonate more with moral philosophers today: duties of gratitude towards a third party do not take effect when one’s parents live in poverty (XXVII 537.34f.). The text suggests that this is an illustration of the other general rule, that several imperfect duties trump a single one; either because more gratitude is owed to one’s parents<sup>51</sup> or because there is, in addition

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*Fragility of Goodness* (Nussbaum 1986, 428). Nussbaum consequently portrays Kant as an arch-rationalist (see Section 6 below). By contrast, Robert Louden correctly rejects Donagan’s distinction and proceeds to argue that we should not assume that “the ground of obligation that fails to hold the field is eliminated or revealed to be illusory” (Louden 1992, 109). Louden defends the thesis that the weaker ground, while vanquished at the time of decision, may yet become a moral feature that must be acted on in the future. My own reconstruction of Kant’s theory of grounds of obligation is very much in agreement with Louden’s suggestion.

**49** One cannot help wondering whether there is *any* good reason to settle oneself with debt if the mortal need of a friend is insufficient.

**50** Kant may be vacuously referring to all-things-considered obligation, or to the more conclusive, strict duty to repay one’s debts.

**51** See *Metaphysics of Morals*, VI 459.26, for a suggestion that may support this idea.

to a duty of gratitude towards both, a special filial duty to support them that tips the scales in their favour. Again, the example is similar in spirit to one used previously in the *Vigilantius* notes, on this occasion to illustrate so-called 'exceptions' to rules of wide duty. Charity was said to be limited by one's own poverty, or the need of one's family (XXVII 537.6–8).<sup>52</sup>

In sum, there appear to be certain general rules of thumb that can serve to decide practical conflicts. Strict juridical duty curtails wide ethical duty. If one action falls under several imperfect duties this outweighs the ground of just a single one. Debts of gratitude break ties when claims of charity conflict. Generally, more specific obligations can make an abstract duty more determinate. In addition, one may want to make some allowance for particularly pressing wide duties to others, e.g. first aid, or perhaps introduce a principle of moral efficiency. But beyond these generalities there seems to be nothing Kantian ethics can tell us about how to resolve conflicts of obligating reasons.<sup>53</sup>

Surprising though this conclusion may be, it accords with the general character of Kantian duties of virtue. Towards the end of the introduction to the *Doctrine of Virtue*, Kant raises the question why the two parts of the book differ with regard to their internal structure. Why, he asks, was it necessary to divide ethics – in Kant's narrow sense, i.e. the part of moral philosophy that relates to matters of virtue – “into a Doctrine of Elements and a Doctrine of Method, when no such division was needed in the doctrine of right” (VI 411.2–4)? The reason is that these two disciplines concern two different kinds of law. The doctrine of virtue concerns essentially wide duties that call for an exercise of judgement, whereas the doctrine of right has to do only with narrow duties the application of which is supposedly unproblematic. Kant concludes that “the doctrine of right, which by its nature must determine duties strictly (precisely), has no more need of a general precept (a method) as to how to proceed in judging than does pure mathematics; instead, it makes them true by the deed [*durch die That*]”<sup>54</sup> (VI 411.6–9). By contrast, owing to the latitude it allows in its imperfect duties, ethics is said unavoidably to lead “to questions that call upon judgement to decide how a maxim is to be applied in particular cases”. Judgement must then “provide another (subordinate) maxim (and one can always ask for yet another principle for applying this maxim too to cases that may arise)”. That is why ethics falls prey to a casuistry that is alien to the doctrine of right (VI 411.10–17). Kant concludes the discussion as follows:

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<sup>52</sup> Similarly: *Metaphysics of Morals*, VI 390.12.

<sup>53</sup> Interestingly, nothing is ever said about the possibility of conflicts of grounds of wide duties to the self and to others.

<sup>54</sup> A phrase familiar from the second *Critique*, where it refers to Kant's doctrine of the 'fact of reason' and, as in this case, signals a final resting point that leaves nothing to be desired.

Consequently, casuistry is neither a science nor part of one, for that would be a kind of dogmatics; and it is not so much a doctrine about how something is to be found as rather an exercise in how to look for truth; it is thus not systematic (as the former would have to be) but woven into ethics in a fragmentary manner, and added only by way of scholia to the system. (*Metaphysics of Morals*, VI 411.18–23)

The link between the need to adjudicate conflicting grounds of obligation and the casuistic training of the human mind is even more explicit in an earlier draft:

But since, unlike duties of right, ethical duties cannot be determined with precision, but are wide duties, where judgement often has difficulties [*wo es der Urtheilskraft oft schwer fällt*] to distinguish what one's duty is in cases of collisions of grounds of obligation [*Verbindlichkeitsgründe*] that occur, ethics will add a casuistry that sharpens the understanding in its judgement of duties. (*Vorarbeiten*, XXIII 419.5–10)<sup>55</sup>

We now understand why Kant does not examine moral conflicts and their resolution in detail. Moral conflict is not capable of philosophical treatment beyond certain generalities – and if it were, it is difficult to see how it would help the individual agent, who has to determine duty for himself. What we need is the development of natural human propensities at the right age. Beyond education, Kant leaves the task of deciding practical priorities to the good judgement of moral agents.

Beneficence can serve as an example. We have already seen that it is an ethical duty that often leads to casuistical problems. From a Kantian point of view, the duty of beneficence should not be confused with mere behaviour to the benefit of others or with ineffectual well-wishing. The one (outward performance) can come about as a result of morally irrelevant considerations, such as the prospect of future personal gain or mere compassion. The other (a wish) will not do if it does not result in voluntary activity when required. Beneficence is located in an agent's maxim – the freely chosen principle of action – to make the happiness of others an end to be furthered and, as Kant puts it in the *Metaphysics of Morals*, “the duty to it consists in the subject's being constrained by his reason to adopt

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55 Another draft makes explicit the connection between duties of virtue and ethical conflict: “As the doctrine of virtue contains only wide duties, which are directed at the maxims of actions but do not determine these actions as does the doctrine of right, there will be a kind of dialectic of practical reason that occasions a conflict of maxims – not to be called an antinomy (for it is not a conflict of laws) – but rather a casuistry, i.e. a totality [*Inbegriff*] of tasks for the power of judgement to distinguish what is ethically permissible in cases that occur and what is not. Such a totality can never be constructed as a science (systematically) but only in a fragmentary manner [...]” (XXIII 389.15–23).

this maxim as a universal law” (see VI 452.28–30). This argument rests on the general law formulation of the categorical imperative and is similar to that employed in the *Groundwork's* fourth illustration of the law-of-nature formula (IV 423.17–35). Every person in need wants help; and someone who, naturally and inevitably, wants other people to help him without being himself prepared to help others is guilty of a contradiction in the will. Kant's summary reads as follows: “To be beneficent, that is, to promote according to one's means the happiness of others in need, without hoping for something in return, is everyone's duty” (VI 453.2–4).

Once again this is where the discussion stops. The exact demands of the duty are left unspecified. At the end of the section, in the course of his ‘casuistical questions’ on beneficence, Kant returns to the problem, but again his answer is less than precise. “How far should one expend one's resources in practicing beneficence?” His reply: “Surely not to the extent that he himself would finally come to need the beneficence of others” (VI 454.2–4). Very much in the same spirit, a note he scribbled in Baumgarten's ethics textbook in the 1770s indicates that the question does not permit of a precise answer: “One cannot give a rule to what extent our needs limit doing good [*Gütigkeit*]” (R 6735, XIX 144.31f.). As he reaches the limits of philosophy, Kant trusts that a virtuous person will reach the right conclusion.

## 6 Subjective Regret and Practical Residue

The question whether ethical theories that leave no room for genuine moral dilemmas can do justice to phenomena like regret and a sense of residual obligation has attracted much attention in recent debates. As Bernard Williams puts it in “Ethical Consistency”, there is a presumption that they cannot, “because they eliminate from the scene the *ought* that is not acted upon”. According to Williams, a structure appropriate to theoretical conflicts of belief is illegitimately projected on to the moral case, “one by which the conflict is basically adventitious”; and a resolution of it “disembarrasses one of a mistaken view which for a while confused the situation”:

Such an approach must be inherent in purely cognitive accounts of the matter; since it is just a question of which of the conflicting *ought* statements is true, and they cannot both be true, to decide correctly for one of them must be to be rid of error with respect to the other – an occasion, if for any feelings, then for such feelings as relief (at escaping a mistake), self-congratulation (for having got the right answer), or possibly self-criticism (for having so nearly been misled). (Williams 1973, 175f.)

In *The Fragility of Goodness*, Martha Nussbaum charges Kant with precisely this mistake.<sup>56</sup> The foundation for her accusation is Donagan's problematic thesis that defeated grounds of obligation disappear completely:

When the stronger 'ground' has prevailed, we see that this alone has all along been out duty in this matter; we drop the conflicting 'ground' as not binding. It quits the field; it no longer exerts any claim at all. (Nussbaum 1986, 32)

If there is no surviving claim, a fortiori the agent should not feel sorry that he has been unable to satisfy it. Moreover, there is no practical residue. Anything else, Nussbaum concludes, would have been an intolerable thought for Kant.<sup>57</sup>

Kant himself is silent on matters of emotional reaction or residual obligation,<sup>58</sup> but the account of moral conflict presented so far makes it unlikely that cognitivist attempts to eliminate all residue would meet with his approval. After all, he usually sets much store by the phenomena of plain, pre-philosophical moral consciousness – and ordinary virtuous agents are deeply affected by cases of conflict, and by a sense of unfinished moral business afterwards. If so, it seems a worthwhile question whether, despite his robust rejection of the possibility of conflicts of duties and obligations, the notion of a *ground* of obligation might help us to develop an adequate Kantian theory of the phenomena of moral conflict, which gives due weight to both our 'rationalist' and our 'sentimentalist' reactions to such cases.

For this project to succeed, a valid if inconclusive ground would have to remain significant when it fails to obligate because the action it favours is ruled out, be it by a stronger ground, by strict duty, or in some other way. The crucial question is *how* its defeat comes about. We can catch a glimpse of the answer in the Vigilantius lectures:

Now one can never say in such cases that it is absolutely impossible to fulfil both duties; and these duties remain even if they are not fulfilled because, as was said above, laws and rules cannot contradict each other, but there is an opposition [*Gegenwirkung*] of the grounds of one duty against those of the other, and this effects that the two duties cannot coexist, because the ground of the one is more binding than the ground of the other [...]. (XXVII 537.35–538.3)

The crucial idea is contained in the thought that the two duties that conflict 'remain' (*bleiben*) even if we cannot act on both of them, and there is therefore no

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<sup>56</sup> Nussbaum's thesis is rightly rejected by Hart 1998, 615.

<sup>57</sup> For a more sympathetic account see Esser 2008, 289f.

<sup>58</sup> See McCarty 1991, 74f., for an attempt to explain Kant's silence.

obligation to act on both. The general validity of a duty, or the grounds it generates, is not affected by particular hindrances. It is not absolutely impossible to fulfil *both* duties because the availability of means is highly contingent. To return to Kant's example of parental poverty and the benefactor's distress: if I were richer than in fact I am, the very same grounds of obligation – to help my benefactor, and to help my parents, both valid in their own right – would not conflict with each other. Neither would be defeated. As a result I would face two obligations instead of one. Grounds of obligation depend on the precarious availability of means to generate duties, but unlike those duties they do not disappear when they cannot be acted upon.<sup>59</sup>

The reason for this follows directly from Kant's distinction between moral and instrumental reasoning. It is, of course, correct to say that it is my duty to give my savings to my parents, but strictly speaking, I have an obligation to help and giving them my savings is the way this is achieved, a mere *means*. The relevant description of the ground created by pure practical reason falls short of recommending that I transfer my savings to my parents' bank account. Nor does moral reasoning tell me that my benefactor's need can be relieved by giving him the same sum of money. (Either would be very surprising!) *Pure* practical reason tells me that benefactor and parents alike deserve my support and that my parents are morally more important. *Empirical* practical reason tells me that the only suitable means is a certain sum of money, which is insufficient to help out both.<sup>60</sup> If it turns out that the money is required to satisfy the stronger ground, this is no different in principle from other cases in which I am not in a position to help because the means are out of reach as a result of any other kind of impossibility: psychological, logical, physical, metaphysical etc., or indeed by the unrelenting direct ought of perfect duty. In any of these cases the agent was unable to do what otherwise he would have been obligated to do. The existence of a token obligation depends on the possibility of an action with regard to all spheres listed above.<sup>61</sup> But the availability or unavailability of means cannot affect the moral status of concrete obligatory ends one has reason to pursue. Clashes of incompatible grounds are indeed adventitious, but this does not affect the validity of the *moral* argument by which they are established.

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<sup>59</sup> 'Ought' implies 'can', but 'reason' does not. An obligating reason or ground depends on realisability to turn into an obligation, but it does not depend on realisability to be valid.

<sup>60</sup> In today's philosophical language, a ground of obligation is a pro tanto reason, whereas the ground in conjunction with instrumental reasoning generates a prima facie duty to use the money.

<sup>61</sup> However, if one takes seriously the force of morality as a Fact of Reason pleading psychological impossibility seems problematic. We conclude that we are free to act accordingly on the strength of our moral convictions: *Du kannst, denn du sollst*.

The result, then, would seem to be the following. There is, Kant plausibly argues, no token obligation to repay debts of gratitude when one's parents live in poverty. This is not a conflict within ethical theory – in theory there can be no conflict – nor a conflict of facts – the fact that my parents require help does not as such conflict with the situation the benefactor finds himself in – but a conflict that arises in moral practice. There are two genuine grounds of obligation that as such do not either conflict or directly obligate.<sup>62</sup> There is, as we might say, good reason to help one's benefactor, and this ground or reason recommends a certain kind of action – that I assist him – but is not by itself sufficient to ground an obligation to perform it. In principle, if circumstances were different, there would be a duty to help him as a matter of priority. But on this occasion, grounds conflict in my maxim when I proceed to act; and there is no obligation to help someone who has been kind to me because the ground of filial obligation is judged to be 'more binding'. It is, all things considered, morally necessary that I help my parents, but the other ground continues to present a valid claim.

It is not difficult to see the implications this has for the phenomena of moral conflict. When reason decides that a ground is strong enough to constitute a token obligation I cannot, first, be guilty of not acting on the vanquished ground. In fact, I would be guilty of acting contrary to duty if I did. Secondly, and consequently, I should not feel remorse about not doing what, morally, I could not do.<sup>63</sup> I did as reason bid me. I did not fail. Thirdly, I cannot regret that I did what I did. In rejecting these three types of responses the Kantian confirms our preconceptions of what a rationalist ought to say. However, there is still room for a decidedly moral and agent-centred kind of reaction. Because the weaker ground continues to make its force felt I will regret that I *had to do* as I was morally bound to do – I will regret that I could not do justice to another valid ground. In the terms of Kant's example, while obviously I do not regret that I supported my parents, I do regret that I *was morally required* to support my parents and that this made it *morally impossible* for me – that there could be no obligation – to help someone who has been good to me. I am frustrated and disappointed that I could not do what there was good reason to do. In addition, I may regret the state of the world, my insufficient bank balance<sup>64</sup>,

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<sup>62</sup> Compare another imperfect duty that does not apply and therefore not produce a ground of obligation, e.g. the duty to help a stranger if there is no stranger that needs one's help. There is, in that case, no reason to help a stranger whereas there is some reason to help one's benefactor, if one that is later vanquished.

<sup>63</sup> Recall that, as the conflict arises in the ethical realm where there are no corresponding rights, the failure to act on the weaker ground does not wrong the affected party anyway.

<sup>64</sup> I may also regret that I did not secure sufficient funds to help benefactor and parents alike, which is slightly different.



and the negative effects of my omission, e.g. the persisting need of the person I was unable to help.<sup>65</sup> But my sense of regret goes *beyond* being unhappy with the unfortunate situation or the results of my behaviour. It is, in an obvious sense of the word, a case of *agent regret*.

What is more, a morally appropriate subjective reaction to a vanquished ground can be seen as the touchstone of whether an agent's moral commitment was genuine. Recall that in the third sentence of the central passage Kant says that two insufficient grounds of obligation can be "combined in a subject and the rule he prescribes to himself" (VI 224.21). As we saw above, this rule is likely to be the agent's maxim, the first-personal principle that contains his practical commitments and thus makes his actions what they are. Grounds of obligation can collide within one's maxim if there are two possible actions that can correctly be subsumed under it, i.e. if there are two features of a situation that, as Kant sometimes puts it, make this situation a *case* of my maxim.<sup>66</sup> If the conflicting grounds belong to two separate duties, there will still be a collision in the subject's set of maxims, though not within a single one. In either case, there is initially a genuine conflict within the virtuous agent's will, not just because he realises that two incompatible objective grounds cannot both be acted on, but also because he is himself *committed* to doing two incompatible things, both recommended by a correct moral assessment of his situation. There is a clash of two things he, qua moral agent, really wants to do. If so, it is only natural that moral conflict should occasion a deep sense of unhappiness.<sup>67</sup> Conversely, if he does not display the appropriate kind of – emotional and practical – reaction to a conflict of grounds of obligation, this is indicative of the fact that he was not appropriately committed to the defeated ground in the first place. As Thomas Hill reminds us, we expect someone to be sad who professes to go to Hawaii for the funeral of an old friend, followed by a week of "nothing but tedious work", and a wife or husband has reason to be suspicious if those words are spoken with a big smile on the spouse's face (Hill 1996, 189).

Kant's theory is also compatible with the idea that defeated grounds of obligation leave some residual obligation, which is at least as important as an ad-

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<sup>65</sup> This kind of regret may diminish as my rational faith in divine justice is strengthened. I should like to thank John Hare for pointing this out to me. There is, however, no need to think that this affects my regret for not having been able to further a cause to which I am justly committed, e.g. for not having been able to help the benefactor.

<sup>66</sup> See, e.g., *Critique of Practical Reason*, V 27.26. Keeping a deposit that only I know about is the 'case of my maxim' to increase my fortune by all secure means.

<sup>67</sup> See Alweiss 2003, 215–218, for the suggestion that the sense of conflict is particularly severe when we feel that our duties are self-imposed.



equate account of moral appraisal and emotional reaction. Again, if a moral agent finds himself in a position in which, on moral grounds, he would like to help a person in need while other factors accidentally prevent this, his genuine commitment to helping others explains his feeling that he ought, if possible, help the person at a later date, or at least explain his apparent lack of charity. (The benefactor who loses out to the agent's parents can expect some kind of apology if I had to disappoint his hope that I would help him.) As we saw above, there is no one-to-one correspondence between ethical duty and specific acts to satisfy them. The categorical imperative commands ends that are to be incorporated into one's maxims. Alternative courses of action may remain if the natural, most straightforward route to discharge a duty is not available.<sup>68</sup>

On reflection, it is hardly surprising that Kantian ethics, which is a conscious attempt to protect moral life from the influence of fortune, accidental circumstance cannot render valid obligating reasons null and void. After all, the categorical imperative commits us to ends that are morally necessary. There can be no conflicts of duties or obligations proper, and therefore no moral dilemmas, inescapable guilt, unavoidable remorse or inevitable self-reproach when an agent has done his duty. But that is only part of a much richer story that, in a philosophical age more sensitive to these matters than Kant's own, we have to tell on Kant's behalf.

## 7 'Ought Implies Can'<sup>69</sup>

Our account of how the force of obligating reasons is redirected in cases of moral conflict makes use of a literal version of the principle that 'ought implies can'. We concluded that there was no duty to come to the aid of the benefactor because this was rendered impossible by the stronger ground to assist one's parents. In this respect – if not with regard to the appropriate emotional response – moral impossibility was considered to be on par with logical, physical, psychological, metaphysical etc. impossibility. There can be no token moral ought if, for whatever reason, the act in question is impossible.

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<sup>68</sup> There is nothing wrong with the situation's triggering these responses because it is after all the situation, not ethical theory, to which the collision of conflicting grounds is due.

<sup>69</sup> See also Timmermann 2003, which discusses the related but distinct principles that 'ought implies can' and the Kantian *Du kannst, denn du sollst*. The latter presupposes that a moral ought exists on the strength of moral conviction – the second *Critique's* Fact of Reason – and concludes on that basis that an action must be metaphysically possible.

This strategy runs counter to a prominent trend in recent discussions of 'ought' and 'can'. A strict interpretation of the principle is thought to lead to counterintuitive consequences even if it is restricted to the distinctly moral sense of 'ought'. Michael Stocker has played a prominent role in this discussion; and Barbara Herman has put forth a similar modification of the 'ought implies can' principle on Kant's behalf.<sup>70</sup> According to Herman, to make sense of the phenomena of moral conflict we face the choice of giving up either the idea that obligations necessitate or the 'usually sacrosanct' postulate that ought implies can. Herman decides to dispense with the latter – or, rather, she abandons the traditional 'narrow' version that relates to token actions in favour of a 'wide' interpretation, according to which "we can be obliged to do actions only of a *kind* that it is possible for us to do" (Herman 1993, 163). Kant's solution as set out above is different. He is not prepared to abandon either position – obligations still necessitate, and the principle that ought implies can, narrowly construed, is still valid – but he introduces the notion of a defeasible ground of obligation instead.<sup>71</sup> What, then, motivates Herman's rejection of 'ought implies can' in its narrow interpretation? And how should Kantians respond?

Herman cites the following case to show that the 'ought implies can' postulate as often employed in discussions of moral conflicts is implausible:

If I am obligated to repay a debt on Wednesday but I squander the money on Tuesday, it seems reasonable to say that my inability to repay my debt does not remove my obligation to repay my debt. (Herman 1993, 163)<sup>72</sup>

The first thing to note is that squandering one's money on Tuesday when one knows full well that it is needed to repay a debt on Wednesday is hardly morally innocent. So, even if it were the case that the agent's inability to repay his debt on Wednesday renders his obligation null and void it would still not be the case that we would have to absolve him of wrongful behaviour. Secondly, the example is *prima facie* plausible only because the obligation in question – the action the agent has to perform – is not stated with precision. On Tuesday, his duty does not just consist in repaying his debt, but rather in 'repaying his debt on Wednesday'. By the time the clocks strike midnight the agent cannot now repay his debt on

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<sup>70</sup> See Stocker 1987 and Herman 1993 respectively.

<sup>71</sup> Kant's solution may, however, count as a variant of the first because the conflict is that of insufficient, i.e. non-necessitating grounds.

<sup>72</sup> Michael Stocker uses a similar example to show that it would be beneficial to abandon the idea that oughts must always be action guiding, a version of what Herman calls the 'narrow interpretation'.

Wednesday and he is indeed, by virtue of the principle that ‘ought implies can’, no longer bound to repay his debt on Wednesday. But it *does not follow* that he no longer has an obligation to repay the debt. On the contrary, he is still under that obligation, but because he can no longer fulfil it on Wednesday, as agreed with his creditor, he now has a raft of new obligations: to apologise, to explain his situation to the other party, to agree new terms, to earn some money and then, finally, to repay his debt a week or so later. For whereas he can no longer repay his debt on Wednesday, he *can* do all of *these* things. The token duty may have vanished. The reason that grounded it has not. Rather than putting pressure on the principle, Herman’s case actually proves its usefulness in guiding action.<sup>73</sup> Thirdly, if it were true that there is still a duty to repay the debt on Wednesday when the agent has squandered his money on Tuesday it would also be the case that, at the same time, he has an obligation to apologise to his creditor that repaying his debt on Wednesday is impossible, which is paradoxical, to say the least.

Consequently, there is no need to deny that Kantian duties imply ‘performance obligations’. In fact, it would be unwise to do so. Those who abandon the narrow interpretation of ‘ought implies can’ deprive themselves of a tool that can be very usefully employed to make moral commands more precise. At the same time, it is of course worth bearing in mind that Kantian duties never *merely* command performance. In this sense, Herman’s move away from ‘performance obligations’ is still valid. Kantian obligation comprises both motivational and performative aspects. After all, the well-known third proposition in *Groundwork*, Section I, defines duty as the necessity of an *action* from *respect* for the moral law (IV 400.18f.).<sup>74</sup>

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<sup>73</sup> Again, ‘ought’ implies can, but ‘reason’ (which is much less specific) does not.

<sup>74</sup> The first version of this paper was read at a meeting of the Cambridge Moral Sciences Club in October 2006. Since then, it has profited from discussions on the following occasions: the Moral Philosophy Seminar at the University of Oxford; the *Norms and Persons* conference at the University of Konstanz; the Early Modern Philosophy Seminar at Yale (thanks to Gilad Tanay, my commentator on that occasion); departmental seminars at the universities of Göttingen, Glasgow (particular thanks to Dudley Knowles) and Stirling, at Trinity College Dublin and at Columbia University (thanks to Katja Vogt, Nandi Theunissen and Patricia Kitcher); the 2010 Summer Reflectorium at the University of St Andrews; the Committee on Social Thought at the University of Chicago; the 2011 Kline Colloquium at the University of Missouri; departmental lecture series at the universities of Mainz, Tübingen and Cracow; a public lecture within the ‘Kant’s Transcendental Idealism in Focus’ project at Keio University in Tokyo in 2011 (many thanks to Wolfgang Ertl); departmental seminars at Lancaster University and the University of East Anglia (thanks to Garath Williams and Angela Breitenbach); the Royal Institute of Philosophy lecture series at Keele University (thanks to Sorin Baiasu and Emilian Mihailov); and the *Zweck und Zweckmäßigkeit* conference at the Technical University in Berlin (thanks to Simon Gabriel Neuffer). A version of

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