

# Perfect and Imperfect Rights, Duties and Obligations

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From Hugo Grotius to Immanuel Kant

D.PHIL. THESIS

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### **Information for Submission along with Abstract**

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### **Abstract**

In this doctoral thesis, Kant’s distinction between perfect and imperfect duties is examined. The thesis begins with an exploration of how the distinction originates and evolves in the writings of three of Kant’s most prominent natural law predecessors: Hugo Grotius, Samuel von Pufendorf, and Christian Wolff. The thesis then moves on to Kant’s own writings. It is argued that Kant draws the perfect-imperfect distinction in as many as twelve different ways, that these ways are not entirely consistent with one another, and that many of them, even taken by themselves, do not hold up to scrutiny. Furthermore, it is argued that Kant’s claim that perfect duties always trump imperfect duties – which can be referred to as “the priority claim” – is not actually supported by any one of the ways in which Kant draws the perfect-imperfect distinction. After this critical reading of Kant’s writings, the thesis then switches gears and a more “positive” project is attempted. It is argued that the perfect-imperfect distinction, even though it does not support the priority claim, is not altogether normatively neutral or uninteresting. In particular, for some of the ways in which the distinction is drawn, it is shown that the distinction yields the following normative implication: Sometimes perfect duties override imperfect duties and all other times there is no priority one way or the other. Finally, it is explained that this normative implication – which can be referred to as the “privilege claim” – translates into the following practical directive: When there is a conflict between a perfect duty and an imperfect duty, sometimes one must act in conformity with the former duty and all other times one is free to choose which of the two duties to act in conformity with. This practical directive represents the ultimate finding of this thesis.

## Chapter 1: Introduction

Suppose that a person, with a weapon in hand, knocks at your door asking of the whereabouts of an apparently innocent fugitive. The fugitive is hiding in your house. Should you lie to the person who you suspect will murder the fugitive? Are you morally *required* to do so? Our common sense says yes. But what about the familiar moral injunction against lying? Is it entirely acceptable, from a moral standpoint, to lie to the murderer?

Consider another case: suppose that you find yourself in extreme want of food and clothes, through no fault of your own. In addition, despite your best efforts, you fail to persuade others to help you. In this situation, do you have a moral *right* to forcefully seize what you need from the property of others? And if you do have such a right, do you even have a moral *obligation* to act on it? In other words, do you *owe* it to yourself to take what you need? But wouldn't behaving in such a way be an immoral act of "theft" or "robbery"? We tend to assume that such acts are wrong and should even be legally prohibited.

In the two examples above, one moral injunction can be satisfied only at the expense of another. In the first, telling the truth to one person (the murderer) conflicts with helping another person in dire need (the fugitive). In the second, preserving the life of one person (yourself) conflicts with respecting the property of other people. These two cases exemplify the phenomenon of "moral conflict" or "ethical dilemma". Thinking hard about such cases can be intellectually stimulating, but it can be equally frustrating. How much attention should we devote to them? And how concerned should we really be by them? In particular, since the examples can seem artificial and potentially far-fetched, are we justified, or even judicious, in disregarding them as "marginal" or "merely hypothetical" when thinking seriously about moral theory?

Unfortunately, the phenomenon of moral conflict is too significant to be ignored by ethical theorists. On the one hand, the phenomenon is pervasive, and so an ethical theory that does not

thoroughly address the phenomenon would fail to account for an important aspect of human experience. Indeed, unlike many of the examples cited by philosophers to draw attention to the phenomenon, the phenomenon itself is not limited to rare, life-or-death, situations. Those extreme examples are illustrative, but not representative. An ethical dilemma occurs not just when lying is the only means available to save someone's life but *whenever* lying is the only means available to help someone. Consider the following more everyday conflict between honesty and assisting others:

A company owner, who is unreasonable in his expectations, instructs ten employees to independently determine the total number of sales on a certain day – a laborious task given the volume of the sales. In addition, the owner assigns to a manager the task of reporting the results. Although rather mundane, this situation gives rise to a thorny moral question: Once several employees have performed the task and obtained the same result, such that the number of sales has been accurately determined, is it morally acceptable for the manager to exempt the remaining employees from the task and falsely report to the owner that all ten employees have obtained the same result? Furthermore, what if the remaining employees have helped the manager in many ways in the past, taking on several of the manager's responsibilities, such that the manager owes them help based on a special duty of *gratitude*, and not just based on a general duty of *beneficence*?

Everyday life situations, of the sort above, and the moral quandaries that they generate, are undoubtedly familiar. But such quandaries are not significant to ethical theory simply in virtue of their pervasiveness. Why should such cases matter in the first place? At least one major reason for why ethical dilemmas are troubling, and deserve the serious attention of ethical theorists, is that they represent instances where there is a high chance that an agent, in good faith, might nonetheless act immorally. Since the right course of action is not readily apparent in situations of conflict, there is a substantial risk that the agent might inadvertently choose the wrong course of action. For act-centered ethical theories, the aim of which is to prescribe morally right conduct, moral conflicts thus pose an

obvious challenge. Lest such theories be deficient by their own standard, they must provide a satisfactory way for resolving moral conflicts. The same holds for ethical theories that focus on the good will of the agent (rather than on whether the agent succeeds in acting rightly).

Presumably, if one has a good will then one *tries*, as best one can, to determine what the right course of action is in any situation. Whether or not the person succeeds may have no bearing on whether or not he has a good will; but genuinely trying to succeed does seem significant. So moral conflicts also pose a challenge for ethical theories centered on the agent's good will. Such theories, to be sure, need not explicitly or directly resolve all possible and imaginable cases of conflict; doing so hardly seems feasible. But a sound theory does need to equip the agent with a way for resolving particular cases of conflict, such that it is possible for the agent to *try* to resolve them. In a nutshell, if an ethical theory says that what matters is doing the right thing *for the right reason*, then that theory must provide the agent with a *reason* for choosing one course of action over another in situations of conflict. The theory is inadequate if it fails to do so.

As moral conflicts pose a challenge for both act-centered and will-centered ethical theories, haven't at least some ethical theorists already proposed methods for resolving them? According to utilitarians, moral conflicts can (and should) be resolved by appealing to the overarching principle of maximizing aggregate social utility (often defined as happiness or pleasure).<sup>1</sup> For non-utilitarians, maximizing aggregate social utility is not the ultimate basis for resolving moral conflicts. Immanuel Kant, the central figure of my dissertation, is perhaps the most significant philosopher outside of the utilitarian tradition to have presented a systematic method for resolving moral conflicts. Kant does not appeal to happiness or pleasure as the ultimate criterion for resolving moral conflicts.

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<sup>1</sup> Of course, there is a marked difference between act and rule utilitarians, but ultimately the method for resolving such conflicts remains the same: that of appealing to the simple overarching principle.

In his famous essay *On a Supposed Right to Lie from Philanthropy*, Kant argues that one should never tell a lie – even to the murderer at the door. The example of the murderer at the door is actually Benjamin Constant’s. Constant uses the example against Kant’s position that lying is in all cases morally wrong. Would it really be wrong, Constant asks, to lie to a murderer in order to save a human life? Kant maintains that even in this extreme life-or-death situation, one is not permitted to lie. Although Kant does not seem hesitant or apologetic in maintaining his view, many of his readers have found his position to be unsettling. Even many Kantians have found his position to be a source of embarrassment. Kant’s position, they point out, seems to place his moral philosophy on a collision course with our basic intuitions, which tell us that we are at least permitted, if not required, to lie to the murderer. If Kant’s moral philosophy yields such a counter-intuitive result, is it right?

Recognizing the potentially damaging regress effect that Kant’s solution to the murderer at the door example might have on his moral philosophy as a whole, one leading Kantian, Christine Korsgaard, has attempted to extricate Kant from his own muddle. According to Korsgaard, we need to differentiate a moral code of conduct that applies in an “ideal world” from one that applies in a “non-ideal world.” Having drawn this distinction, we can reasonably argue that Kant’s claim – lying is never permitted – only applies in the context of an “ideal world”, where evil does not exist; such a world contains no murderers, and, by implication, no murderers knocking at doors. Thus, for Korsgaard, Kant’s error occurs not because his ethical theory is faulty in and of itself, but because it is extended beyond its proper scope:

Kant’s rigorism about lying is not the result of a misplaced love of consistency or legalistic thinking. Instead, it comes from an attractive ideal of human relations which is the basis of his ethical system. If Kant is wrong in his conclusion about lying to the murderer at the door, it is for the interesting and important reason that morality itself sometimes allows or even requires us to do something that from an ideal perspective is wrong. The case does not impugn Kant’s ethics as an *ideal* system. (Korsgaard 1986, p. 327)

Although interesting, Korsgaard's interpretation of Kant, which can be described as "non-textualist" or "liberal", is problematic. It renders Kant's moral philosophy irrelevant to situations where we are confronted with evil, which is arguably when we need it the most. Indeed, we live in the real, not ideal, world, and it is for this world that we primarily, if not exclusively, are in search of a moral code of conduct. Thus, in an attempt to shield Kant's moral philosophy from the charge of "rigorism", Korsgaard ends up severely limiting the reach of Kant's moral philosophy. Her approach comes at too high a cost: It generates the need for an entirely new ethics to be applied in situations of evil. Korsgaard even acknowledges that this is the result *if* her interpretation is adopted: "If so, the task of Kantian moral philosophy is to draw up for individuals something analogous to Kant's laws of war: special principles to use when dealing with evil" (Korsgaard 1987, p. 349). Unfortunately, however, creating such an entirely new ethics is no small endeavor. Such a project, moreover, would seem decisively un-Kantian; Korsgaard's "non-ideal world" principles find little support in Kant's writings, which is also something Korsgaard even acknowledges: "I have portrayed Kant as an uncompromising idealist, and there is much to support this view" (Korsgaard 1987, p. 349).

Thus, Kant's radical proposal for resolving moral conflicts, including his claim that lying is never morally permitted, deserves further examination. Such examination is the goal of my thesis. I base my examination of Kant's method for resolving moral conflicts on a close reading of Kant's practical writings – moral, legal, and political. The examination reveals that beneath Kant's moral absolutism, including the injunction against all lying, is a fundamental claim: Perfect duties always override imperfect duties. Although this claim, which can be referred to as "the priority claim", has not received much attention in the secondary literature, it is of critical importance: It represents Kant's very method for resolving moral conflicts.<sup>2</sup>

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<sup>2</sup> In this thesis, the following language is used interchangeably: "override," "trump," "supersede," and "have priority over." Also, whenever mention is made of priority, and it is not qualified with terms such as "sometimes"

My approach focuses on the analytical device upon which Kant relies to solve problems of moral conflict. In focusing on the perfect-imperfect distinction, my aim is not only to shed light on Kant's writings. I hope also to make a contribution to practical philosophy in general. The perfect-imperfect distinction is one that numerous philosophers have employed since Kant; it is still in use to this day. Except for one of the ways in which Kant draws the perfect-imperfect distinction, the distinction is separate from substantive Kantian commitments, such as the Moral Law. This thesis will hopefully be of interest not only to Kantians and Kant scholars, but also to anyone interested in moral conflicts and in duty-based moral and legal systems. The following are the main questions that the thesis seeks to answer:

- (1) What are perfect and imperfect duties?
- (2) From where does this distinction originate and how does it evolve prior to its adoption by Kant?
- (3) Is it true that perfect duties always override imperfect duties?
- (4) If not, does the perfect-imperfect distinction still have some normative implication?

In addition to addressing the above four central questions, this thesis discusses several further ones, arguably perennial questions of practical philosophy. They appear in light of some of the ways in which the perfect-imperfect distinction is drawn:

- (i) Which moral duties ought to be legal duties?
- (ii) Should either ends or means have priority over the other?
- (iii) Can there be supererogatory action?
- (iv) Should considerations pertaining to the relation one stands in towards others be allowed to factor into the process of moral deliberation?

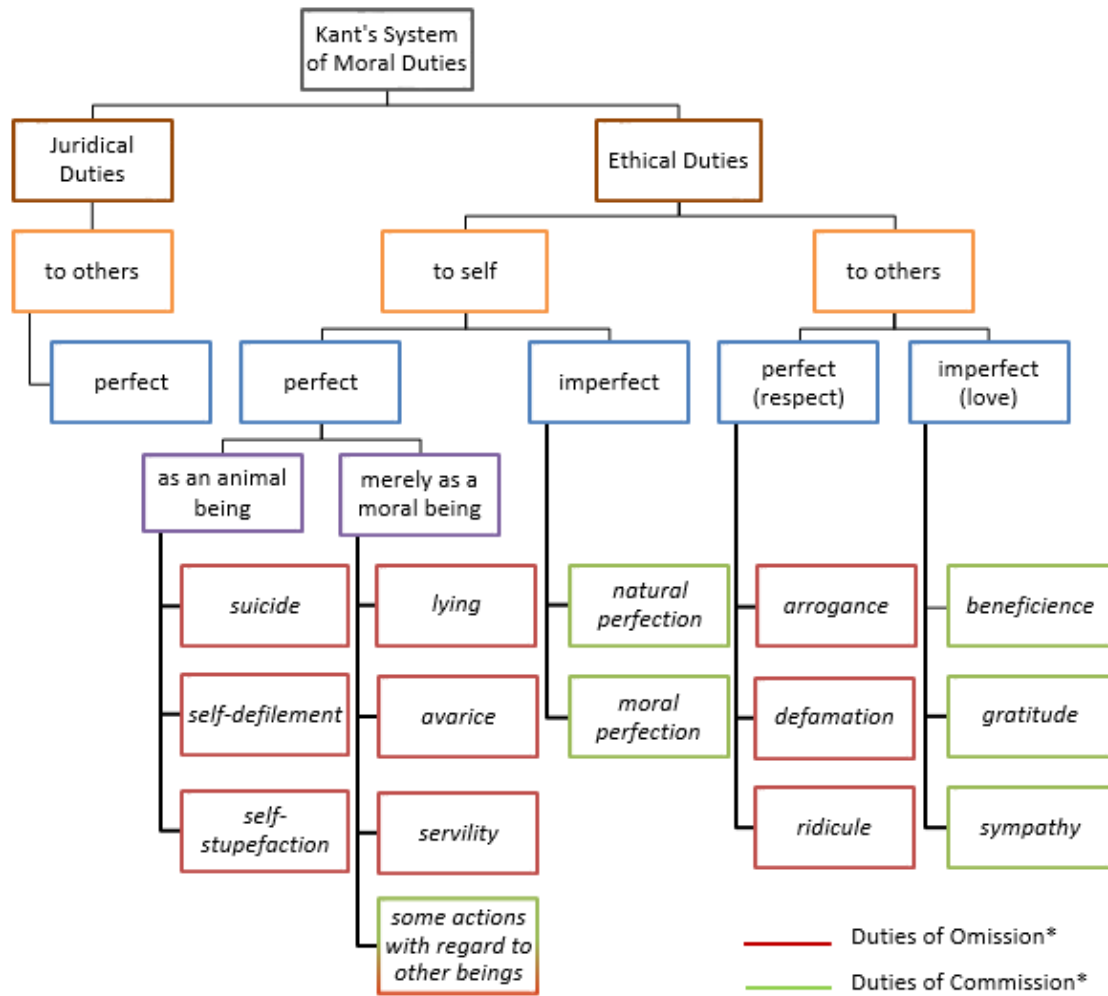
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or "always", what is meant is absolute or necessary priority – if a duty is said to have priority over another duty *tout court*, what is meant is that it *always* has priority over that other duty.

The thesis is organized as follows. Chapter 2 examines the distinction between perfect and imperfect duties from its early modern origin in the work of Hugo Grotius up to its adoption by Kant. The chapter prepares the way for the subsequent chapters by situating Kant's use of the distinction into its context in the history of philosophy. Special attention is given to how the distinction is drawn by Kant's predecessors and to whether they are committed to the priority of perfect duties over imperfect duties (the "priority claim"). Although these philosophers are primarily interested in perfect and imperfect "rights" and "obligations", hence the inclusion of these terms in the title of this thesis, the distinction is essentially the same as the one drawn at the level of "duties". Chapter 3 focuses on how Kant draws the distinction between perfect and imperfect duties. The chapter shows that Kant draws the distinction in twelve different ways, that these ways are not entirely consistent with one another, and that many of them, even taken by themselves, do not hold up to scrutiny. Chapter 4 shows that none of the ways in which Kant draws the distinction between perfect and imperfect duties lends support to the priority claim. Finally, chapter 5 argues for an interesting and significant normative implication of the perfect-imperfect distinction: When there is a conflict between a perfect duty and an imperfect duty, sometimes one must act in conformity with the former duty and all other times one is actually free to choose which of the two duties to act in conformity with.

The following table and diagram are provided as aids to which the reader may refer when reading this thesis. The table lists the twelve ways in which Kant, according to my analysis, draws the distinction between perfect and imperfect duties; the roman numerals in the left-hand column correspond to the sections in chapter 3 in which each of the ways is discussed. The diagram attempts to reflect in an organized fashion the classes and subclasses of duties that Kant makes use of, along with the duties that fall under them. Kant's own presentation of the classification, in the *Metaphysics of Morals*, can sometimes seem like a maze.

		<i>Perfect Duties</i>	<i>Imperfect Duties</i>
I	1	Result from a contradiction in conception	Result from a contradiction in will
II	2	Do not allow latitude in execution	Allow latitude in execution
III	3	Do not admit of exceptions	Admit of exceptions
IV	4	Can be enforced through external coercion	Cannot be enforced through external coercion
	5	Motive need not be respect for duty	Motive must be respect for duty
V	6	Correlated with rights	Not correlated with rights
	7	Correlated with rights to compel performance	Not correlated with rights to compel performance
VI	8	Fulfilment of them is mandatory	Fulfilment of them is supererogatory
VII	9	Command the omission of actions	Command the commission of actions
VIII	10	Necessary for the preservation of humanity	Necessary for the furtherance of humanity
IX	11	Regulate actions	Regulate maxims
	12	Regulate actions	Prescribe ends



\* This way of drawing the distinction is challenged, however, in section VII of chapter 3.

## **Chapter 2: The Perfect-Imperfect Distinction Prior to Kant**

### **I. Introduction**

The distinction between perfect and imperfect duties is one that Kant takes on from others. It is one that Hugo Grotius introduces in the early modern period and that other natural law philosophers subsequently use. All of them conceive of morality as a system of rules and duties that is similar in structure to the positive law of a state. In an ethics of duties, two questions seem to inevitably arise. (1) How can the duties be categorized? (2) How can conflicts between duties be resolved? It is in formulating their answers to these two questions that several natural law philosophers employ the distinction between perfect and imperfect duties.

In this chapter, the distinction between perfect and imperfect duties is examined as it appears in the works of three of Kant's most prominent natural law predecessors: Hugo Grotius, Samuel von Pufendorf, and Christian Wolff. These three philosophers make extensive use of the distinction between perfect and imperfect duties. Analyzing their use of the distinction provides insights into their moral systems. It also provides an opportunity to engage with some of the philosophical questions with which they grapple and that continue to be of interest to us today.

On the one hand, there is the very general question of how to think about the relation between law and morality. In the works of these natural law philosophers, this question takes on two forms. (1) How should the boundary be drawn between moral duties that ought to be legally recognized and moral duties that ought not to be? (2) When two moral duties on different sides of the boundary come into conflict, which should have priority? These two questions are fundamental. In the course of exploring answers to them in this chapter, several further interesting questions arise. Is a contractual agreement necessary in order for legal rights and obligations to come into existence? Are acts in conformity with a duty advantageous to society even when they are performed out of fear of the law rather than out of respect for duty? Does legally recognizing a duty replace a social incentive with a

legal incentive that is actually stronger? Can the different social functions that duties serve – some ensuring the continued existence of society while others its improved existence – form the basis for drawing the boundary between the legal and the merely moral? Can there be punishment outside of the law or punishment other than for a crime? Does the legal right to private property include an exception for situations of need? Is it acceptable to break a contracted obligation on grounds of conscience? Thus, the chapter engages with a host of questions that are central to the philosophy of law.

On the other hand, there is the very general question of how to think about the relation between means and ends, whether one of them has priority over the other. In the works of two of the natural law philosophers discussed in this chapter, Grotius and Pufendorf, this question arises in the form of two practical questions. (1) Is one permitted to lie in order to help others or to achieve some other desirable end? (2) Is one permitted to steal in order to provide for oneself when in need? The answers that they provide are complex: (a) lying is always morally forbidden but intentionally making a false statement is sometimes morally permitted and similarly (b) stealing is always morally forbidden but seizing property that has belonged to others is sometimes morally permitted. They take absolutist positions against “lying” and “stealing”, but their positions do not actually correspond to the absolutist position that means have priority over ends. This complexity results from the fact that ends are accounted for in their very definitions of lying and stealing – whether an action counts as “lying” or “stealing” *depends* on whether it is carried out for a good end. Thus, the chapter explores one way out of the rigoristic religious and moral traditions that some natural law philosophers seem to have adopted: certain act-types are maintained as strictly morally forbidden – in appearance nothing is changed – but the act-types are redefined in such a way that fewer act-tokens fall under them and so some exceptions are allowed for. The chapter also contributes to our appreciation of a more widespread phenomenon. It is indeed not only in the writings of natural law philosophers that actions

are defined in relation to considerations that might be thought of as external to the actions themselves. For instance, in the English criminal law, murder, rape, assault, and forgery are all strictly morally forbidden but these actions are also all defined in such a way that intentions and ends are accounted for. The charge of murder, for example, does not apply to the case of killing in self-defence.

In light of all of the above, analyzing the use of the distinction by some of Kant's predecessors is clearly philosophically rewarding independently of any philosophical interest in Kant's own use of the distinction. Is analyzing the use of the distinction by some of Kant's predecessors also helpful to understanding Kant's own use of the distinction? In a footnote to the *Groundwork*, Kant acknowledges that the distinction between perfect and imperfect duties is one that he takes on from others: it is one that has already been "adopted in the schools" (G 4:422). Although Kant acknowledges this fact, he does not seem to ascribe much significance to it. Indeed, in the very same footnote, he asserts the following: (1) "I reserve the division of duties entirely for a future *Metaphysics of Morals*, so that the division here stands only as one adopted at my discretion (for the sake of arranging my examples)" and (2) "although this [way in which I draw the distinction] is contrary to the use of the work adopted in the schools, I do not intend to justify it here, since for my purpose it makes no difference whether or not it is granted me" (G 4:422). Both of these assertions suggest that Kant does not actually think that it would be valuable for him to examine how the distinction has been used by his predecessors. He seems to think that what others have done with the distinction is quite irrelevant to what he chooses to do with it. Consistently with this view, when Kant goes on to say more about the distinction in the *Metaphysics of Morals*, he does not refer to any of his predecessors, let alone engage with them about how they draw the distinction or what purpose they think the distinction serves.

Although Kant is resistant to examining the distinction as it appears in the works of his predecessors, doing so can actually shed light on his own use of the distinction. As will become apparent in chapters 3 and 4, Kant's use of the distinction is deeply problematic: He draws the

distinction in as many as twelve different ways that are not entirely reconcilable with one another and furthermore none of these ways lends support to the priority claim. Chapters 3 and 4 might leave the reader wondering about the origin and evolution of the distinction, specifically about whether the problems with the distinction are the result of Kant's own doing. They might also leave the reader wondering about whether some of what Kant attempts to do with the distinction can in fact be salvaged instead of having to abandon the distinction altogether. Examining in this chapter the distinction as it appears in the works of Grotius, Pufendorf, and Wolff helps in addressing both of these points of inquiry.

In relation to the first point, this chapter shows that the distinction is not trouble-free prior to its adoption by Kant. Indeed, when Grotius introduces the distinction, he does so in order to denote the difference between legal and non-legal duties. However, he does not clearly specify the status of imperfect duties. Perfect duties are necessarily legally recognized but are imperfect duties *necessarily not* legally recognized or *not necessarily* legally recognized? The distinction can be drawn in more than one way even with respect to the same consideration of legal recognition. When Pufendorf appropriates the distinction, he adds two problematic elements to it. On the one hand, he tries to explain why some duties ought to be legally recognized whereas others ought not to be based on the view that some duties are conducive to the mere existence of society whereas others are conducive to its improved existence. His explanation is unsuccessful and the result is that the distinction between perfect and imperfect duties is drawn in two non-equivalent ways. On the other hand, although he proposes to resolve conflicts between duties by asserting that perfect duties have priority over imperfect duties, he abandons the priority claim in his handling of particular examples. The result is that the priority claim is a point of inconsistency in his moral philosophy – it is asserted in theory but rejected in practice. When Wolff adopts the distinction, he rejects the priority claim altogether and asserts its exact opposite: imperfect non-legal duties have priority over perfect legal duties. Whether

the perfect-imperfect distinction supports the priority claim is therefore clearly a matter of disagreement; not all philosophers think that it does. Of course, based on these findings, it is not possible to rule out the possibility that *some* problems with Kant's use of the distinction are the direct result of his own doing. For instance, unlike Kant, none of Grotius, Pufendorf, and Wolf draws the distinction based on the difference between mandatory and supererogatory action or based on the difference between a contradiction in conception and a contradiction in will. Nonetheless, it seems fair to conclude that the general problem of drawing the distinction in more than one way and the general problem of whether the distinction actually supports the priority claim both predate Kant.

In relation to the second point of inquiry, which is whether some of what Kant tries to do with the distinction can in fact be salvaged, this chapter provides two insights. The first is that some of the ways in which Kant draws the distinction might be worth maintaining *even if* none of the ways in which he draws the distinction supports the priority claim. Admittedly, the separability of the distinction from the priority claim can be ascertained *in abstracto*. However, it is made clear *in concreto* by the fact that Grotius uses the distinction in order to denote a difference between duties that he thinks is of inherent interest or value and does not pay any attention to matters of priority. The second insight is that when Kant asserts the priority claim he is not merely offering a solution for resolving conflicts between duties. He is also taking a substantive position regarding which duties are more important than others. Admittedly, that the priority claim is more than just a method for resolving conflicts between duties can also be ascertained *in abstracto*. However, it is here again made clear *in concreto*; this time by the fact that Pufendorf asserts that perfect duties have priority over imperfect duties whereas Wolff reverses the order of priority. Indeed, the difference between Pufendorf and Wolff cannot be explained in terms of *whether* conflicts between duties are resolved – both of them provide a procedural solution for resolving conflicts. The difference between them can only be expressed in terms of *how* conflicts

are resolved, and underlying the choice of each procedure is a substantive philosophical view or commitment.

In what follows, how each of Grotius, Pufendorf, and Wolff make use of the distinction between perfect and imperfect duties is examined in turn.

## II. Hugo Grotius

According to Grotius, perfect duties are those duties that must be legally recognized whereas imperfect duties are those duties that must remain outside of the legal sphere – the former are obligations “from the point of view of strict justice” whereas the latter are “not strictly legal.” In other words, it ought to be possible to bring action against the violator of a perfect duty in a court of law but not against the violator of an imperfect duty. Moreover, in the absence of a suitable court of law, resorting to force against the violator of a perfect duty is acceptable whereas resorting to force against the violator of an imperfect duty is not. For example, the violation of a perfect duty can constitute a just cause for a state to go to war whereas the violation of an imperfect duty cannot. Grotius makes use of the terminology of perfect rights in order to denote legal rights at various points in *The Rights of War and Peace* (See for example RWP II.XXVI.VI and RWP III.VI.VII). In the following passage, he elaborates on the distinction between legal and non-legal obligations:

An unjust cause of war is also the desire to obtain something that is owed by an obligation not strictly legal but arising from some other source. This principle, too, must be recognized. If a person owes a debt that is not an obligation from the point of view of strict justice, but arises from some other virtue, such as generosity, gratitude, pity or charity, this debt cannot be collected by armed force any more than in a court of law. For either procedure it is not enough that the demand which is made ought to be met for a moral reason, but in addition we must possess some right to enforce it. This right is at times conferred by divine and human laws even in the case of obligations that arise from other virtues; and when this happens there arises a new cause of indebtedness, which relates to justice. When this is lacking, a war undertaken on such grounds is unjust, such as the Roman war against the King of Cyprus on the charge of ingratitude. He who confers a kindness has no right to demand gratitude; otherwise there would be an agreement, not an act of kindness. (RWP II.XXII.XVI)

Elsewhere in *The Rights of War and Peace*, Grotius asserts that “a citizen may be constrained to do that which regard for others requires” (RWP II.XXV.III). He rejects the view that a rich man “by the precepts of mercy is bound to give alms to the poor man, but ... nevertheless cannot be forced to do so” and instead maintains that “during a grain famine citizens may be compelled to contribute what they have to the common store” (RWP II.XXV.III). Grotius seems to be saying that the imperfect obligations of charity and benevolence can in some circumstances be legally recognized. Perhaps this was already suggested in the above-quoted passage when he says that “[t]his right is at times conferred by divine and human laws even in the case of obligations that arise from other virtues; and when this happens there arises a new cause of indebtedness, which relates to justice.” In other words, though an “agreement” may be sufficient for legal rights and obligations to come into existence, it does not seem to be necessary. Thus, the Grotian distinction between perfect and imperfect duties is perhaps not best stated as follows: the first are necessarily legally recognized whereas the second *necessarily are not*. It is perhaps better stated as follows: the first are necessarily legally recognized whereas the second *are not necessarily*. In either case, the distinction is still drawn based on the consideration of legal recognition.

Given how Grotius draws the distinction between perfect and imperfect duties, the priority claim is equivalent to the following: legal duties have priority over non-legal duties. Is Grotius committed to this claim? The following sentence might seem to strongly suggest that he is: “Also in prohibitions that which adds a penalty should be given preference over that which lacks a penalty, and that which threatens a greater penalty should have the preference over that which threatens a lesser penalty” (RWP II.XVI.XXIX). Indeed, the first half of the sentence might seem to be a mere paraphrase of the priority claim. However, from context, it is obvious that Grotius is asserting a priority relationship between two legal duties; he is establishing an ordering *within* the legal sphere. The chapter from which the sentence is excerpted is titled “On Interpretation” and what is at issue is the interpretation

of contracts and treaties. More specifically, the question Grotius is here trying to address is what rules ought to be observed “when the parts of a document are in conflict”; he is interested in determining “which part of the document ought to prevail” (RWP II.XVI.XXVIII; RWP II.XVI.XXIX).

Despite the above contextual evidence, it might seem that the first half of the sentence must be understood as asserting a priority relationship between legal and non-legal duties if it is to make any sense. Is a penalty not the very mark of a legal duty? Are prohibitions that do not have a penalty annexed to them not necessarily extralegal? Admittedly, if a duty is not legally recognized then no penalty is annexed to it. Indeed, a known principle of Roman law goes as follows: *nulla poena sine lege* (no punishment outside of the law). Grotius acknowledges that an obligation that allows of no compulsion allows of no punishment: “we are not to punish actions which are contrary to the virtues in regard to which nature rejects all compulsion, such as mercy, liberality, and gratitude” (RWP II.XX.XX). However, a penalty is not annexed to every duty that is legally recognized. Only crimes, violations of the law that are considered to be of public interest, are punished. Another known principle of Roman law goes as follows: *nulla poena sine crimen* (no punishment except for a crime). In criminal cases, the state prosecutes the offender and seeks punishment. In civil cases, it is up to the victim to seek damages – not punishments – by taking the case to court.

Grotius seems to accept the above distinction between criminal and civil law. Indeed, he declares that “the criminality of the act must be distinguished from its effects” and explains that “to the former punishment corresponds, and reparation for the loss to the latter” (RWP II.XVII.XXII). He also asserts that “he who punishes, that he may punish rightly, must have the right to punish; and this right arises from the crime of the guilty” (RWP II.XX.II). Most revealing is what Grotius says in the below passage:

The injustice is the greater the heavier the loss that is brought upon another. Therefore, in order of seriousness, the first place is assigned to crimes actually carried out, and the next place to those which have proceeded to certain actions but not to the final act. Among the latter each is more serious the farther it has proceeded. In

either sort of crimes that form of injustice is prominent which disturbs the public order and therefore harms the greatest number. Next in importance comes the injustice which affects individuals. Here the greatest injustice is that which affects human life; the next that affecting the family, the basis of which is marriage; and the last that affecting desirable things severally, either by directly taking them away or through evil intent giving rise to loss. (RWP II.XX.XXX)

In the above passage, Grotius does not only distinguish between crimes and private wrongs (injustices which affect individuals). He also ranks crimes and private wrongs from most bad to least, as indicated by the following language: “in order of seriousness,” “the first place,” “the next place,” “more prominent,” “next in importance,” “the greatest injustice,” “the next,” and “the last.” After he ranks types of crimes, Grotius says that “[n]ext in importance comes the injustice which affects individuals.” He then ranks such types of injustice. Thus, according to Grotius, all types of crimes are worse than all types of private wrongs. This is consistent with the following interpretation that has here been suggested: when Grotius says “in prohibitions that which adds a penalty should be given preference over that which lacks a penalty,” what he means is that criminal legal duties have priority over civil legal duties.

The other textual evidence that might at first seem to indicate that Grotius is committed to the priority claim comes from his discussion of oaths. Grotius implies that oaths allow of no evasion. He says that “the obligation is inseparable from the oath and is a necessary result of it” and that “[a]lthough in the case of other promises a tacit condition, which absolves the promisor, is easily understood, nevertheless this ought not to be admitted in the case of an oath” (RWP II.XIII.II; RWP II.XIII.III). However, there are several problems with taking what Grotius says about oaths as evidence that he is committed to the priority claim. First, it is not clear that duties one incurs upon pledging an oath are best thought of as legal duties. For Grotius, there is an important religious component to oaths. In fact, he seems to think that the binding force of oaths is derived from the appeal that is made to God: “in calling to God to witness his words he ought to make them true” (RWP II.XIII.III). Second, even if duties one incurs upon pledging an oath are best thought of as legal duties, it is not clear that

what applies to them also applies to all other legal duties. In particular, it is not clear that if they have priority over non-legal duties then all other legal duties also have priority over non-legal duties. In the above quoted passage, Grotius emphasizes that, contrary to oaths, other kinds of promises can be easily absolved by a “tacit condition.” Third, Grotius builds extralegal moral considerations into the existence conditions of oaths. Oaths are only valid if the duty which results from them does not conflict with a moral duty of greater importance: “even if the thing which is promised is not unlawful, but only hinders a greater moral good, under such a condition also the oath will not be valid” (RWP II.XIII.VII). Therefore, Grotius clearly does not relegate extralegal moral considerations to second place in his discussion of oaths.

Overall, there is no evidence that Grotius is committed to the priority of legal over non-legal duties. In addition, there is evidence that he is *not* committed to the priority of duties that regulate actions over duties that specify ends – to the priority claim on another way in which the distinction is drawn by Kant.<sup>3</sup> The clearest evidence comes from what Grotius says about lying and from what he says about stealing.

Randal Marlin classifies Grotius among “those who allow exceptions” to lying, as opposed to among those who are “absolutists against lying” (Marlin 2002, p. 145). Strictly speaking, Marlin is mistaken in his classification. This is because Grotius does maintain that lying is always morally forbidden. Grotius takes exception to what *counts* as lying. For Grotius, a lie is not merely a statement believed to be false which is delivered with the intention to deceive. In order to count as a lie, an act must be in “conflict with the existing and continuing right of him to whom the speech or sign is addressed” (RWP III.I.XI). Specifically, it must be a violation of the person’s right to “liberty of judgement which, as if by some tacit agreement, men who speak are understood to owe to those with whom they converse” (RWP III.I.XI). As James Mahon explains, lying is morally forbidden by definition:

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<sup>3</sup> The distinction is drawn as follows: perfect duties regulate actions whereas imperfect duties specify ends.

Since, according to this definition, lying is always a violation of another person's right of liberty of judgment ... and because, according to those who defend this definition, it is indefeasibly wrong to do this, for these philosophers, the claim that lying is indefeasibly morally wrong is a tautology. (Mahon 2009, p. 18)

Together with the view that not every intentionally false statement violates a right to liberty of judgment, the above definition makes it possible both to maintain that lying is morally forbidden and to allow for some intentionally false statements. Sissela Bok likens this strategy employed by Grotius to the one employed by "casuist thinkers [who] developed the notion of the 'mental reservation,' which, in some extreme formulations, can allow you to make a completely misleading statement, so long as you add something in your own mind to make it true" (Bok 1999, p. 14). The purpose of both strategies is indeed the same: to preserve an absolutist stance against lying while allowing for some intentionally misleading statements. However, the specifics of both strategies are in a sense opposite. One strategy consists in redefining the category of lying so that some acts no longer fall under this category. Another strategy consists in changing some acts by incorporating a mental reservation so that they no longer fall under the category of lying.

Given his handling of some cases, it is clear that Grotius thinks that not every intentionally false statement violates a right to liberty of judgment. In some cases, he believes that the addressee does not even possess such a right: "even if something which has a false significance is said to an infant or insane person no blame for falsehood attaches thereto ... [t]he reason is by no means far to seek; since infants and insane persons do not have liberty of judgement, it is impossible for wrong to be done them in respect to such liberty" (RWP III.I.XII).<sup>4</sup> In other cases, he believes that the right to liberty of judgment is overridden by some other right: "it may happen that the right [to liberty of judgement] has indeed existed, but has been taken away, or will be annulled by another right which supervenes, just as a debt

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<sup>4</sup> Telling them falsehoods might still be morally forbidden for some other reason. For instance, it might be morally forbidden if it is likely to cause them harm.

is cancelled by an acceptance or by the cessation of the condition” (RWP III.I.XI). In particular, Grotius believes that the right to liberty of judgment is overridden in all of the following cases:

- (1) One tells a falsehood with the intention of furthering the good of the addressee, and one is certain that the addressee would not disapprove of this treatment (or, more strongly, that the addressee would approve of this treatment): “whenever it is certain that he to whom the conversation is addressed will not be annoyed at the infringement of his liberty in judging, or rather will be grateful therefor, because of some advantage which will follow” (RWP III.I.XIV).
- (2) One tells a falsehood with the intention of furthering one’s own good or the public good, and one occupies a position of authority: “when one who has a right that is superior to all the rights of another makes use of this right either for his own or for the public good. This especially Plato seems to have had in mind when he conceded the right of saying what is false to those having authority” (RWP III.I.XV).
- (3) One tells a falsehood with the intention of avoiding an especially bad outcome, and doing so may be necessary to avoid this outcome: “where the life of an innocent person, or something else of equal importance, cannot be saved without falsehood, and another person can in no other way be diverted from the accomplishment of a wicked crime” (RWP III.I.XVI).

In light of the above, clearly Grotius believes that intentionally telling a falsehood “is in the category of things which from their very nature are not at all times vicious but which may even happen to be good” (RWP III.I.VI). Clearly he is not committed to the priority of duties that regulate actions over duties that specify ends.

The approach Grotius takes to the case of stealing is similar to the approach he takes to the case of lying. He maintains an absolutist position against stealing but takes exception to what *counts* as stealing. In particular, he asserts that “if a man under stress of such necessity takes from the property of another what is necessary to preserve his own life, he does not commit a theft” (RWP II.II.VI). Indeed,

according to Grotius, in order for a theft to be committed a right to private property must be violated and in situations of need no right to private property actually exists: “in direst need the primitive right of user revives, as if community of ownership had remained” (RWP II.II.VI).<sup>5</sup> He claims that the original common use right revives in situations of need because the parties to the social contract never intended to cede their rights to use in all situations – they always intended for there to be an exception in situations of need. For example, he says that “[w]e must, in fact, consider what the intention was of those who first introduced individual ownership; and we are forced to believe that it was their intention to depart as little as possible from natural equity” (RWP II.II.VI). He also says that: “[A]ll things seem to have been distributed to individual owners with a benign reservation in favor of the primitive right. For if those who made the original distribution had been asked what they thought about this matter they would have given the same answer that we do” (RWP II.II.VI).

Admittedly, there is some disagreement among commentators over the degree of Grotius’ confidence about the intentions of the parties to the social contract. Some commentators, such as Richard Tuck, might consider the following statement, made above, to be too strongly worded: the parties to the social contract never intended to cede their rights to use in all situations – they always intended for there to be an exception for situations of need. Tuck has read Grotius as applying “interpretive charity,” the view that one should be generous in interpreting past agreements. The following are some passages in which Tuck’s reading comes across:

- (1) “In principle, Grotius was arguing, all our rights *could* be renounced; but interpretive charity requires that we assume that all were not *in fact* renounced” (Tuck 1979, p. 80).

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<sup>5</sup> This original right is a right to *use* that is possessed by *each* individual. As Stephen Buckle explains, the original right “is common to mankind in the sense that everyone has it: it is not a right to a common possession (in the sense of joint ownership)” (Buckle 1991, p. 36). Grotius makes this clear when he says that this right “can be understood from the comparison used by Cicero in his third book *On Ends*: ‘Although the theatre is a public place, yet it is correct to say that the seat which a man has taken belongs to him’” (RWP II.II.II). The passage in Cicero’s *On Moral Ends* to which Grotius is referring is the following: “Now although a theatre is communal, it can still rightly be said that the seat which one occupies is one’s own” (OME III.II.LXVII).

- (2) “We must presume that our predecessors were rational, and hence that they could not have intended to leave us totally bereft of our rights. This is the argument that Grotius had used to defend the possibilities of resistance and common ownership *in extremis*” (Tuck 1979, p. 143).
- (3) “The principle of interpretative charity, of course, is only applicable in the absence of any clear historical evidence: it remains true that *logically*, all rights are renounceable” (Tuck 1979, p. 149).
- (4) “As in Grotius ... the argument turns on what a rational man can be presumed to have consented to: in principle ... any rights are renounceable, but some are unlikely ever to have been renounced” (Tuck 1979, p. 155).

Other commentators have rejected Tuck’s reading. For instance, John Salter has argued that Grotius was in fact “sure” and “confident” about the intention of those who first introduced private property (Salter 2005, p. 291-2). Similarly, Stephen Buckle has described Tuck’s reading as “potentially misleading” because “it is not simply that we should *assume* that the founding fathers had the best or most appropriate intentions” but rather that “we are *forced* to believe” that they were committed to natural equity and so to the revival of the original common use right (Buckle 1991, p. 46).

Though significant, the disagreement between Tuck and his critics does not pertain to the “content” of the intention of the parties to the social contract. On all of these readings, the intention is for there to be a return to the original common use right in situations of need. As a result, on all of these readings, Grotius authorizes the act of taking what has belonged to others when it is carried out in order to preserve one’s own life. He justifies the act by its end.

*Conclusion:*

Grotius draws the distinction between perfect and imperfect duties based on the consideration of legal recognition but he does not clearly specify whether imperfect duties are *necessarily not* legally recognized or *not necessarily* legally recognized. Moreover, there is no evidence

that Grotius is committed to the priority of legal over non-legal duties and there is evidence that he is *not* committed to the priority of duties that regulate actions over duties that specify ends.

III. Samuel von Pufendorf

Similarly to Grotius, Pufendorf draws the distinction based on the consideration of legal recognition. The following are three revealing passages, respectively drawn from his *Elements of Universal Jurisprudence*, *On the Law of Nature and of Nations*, and *On the Duty of Man and Citizen*.

Now right is either *perfect* or *imperfect*. He who infringed upon the former does a wrong which gives the injured party in a human court of law ground for bringing action against the injurer. To this corresponds on the other side perfect obligation in him from whom that which is owed us is to come. Therefore, I am able to compel him, when he refuses to pay this debt voluntarily, either by directing action against him before a judge, or, where there is no place for that, by force. (EUJ I.VIII.II; see also EUJ I.VIII.V and EUJ I.XII.III)

It should be observed, in conclusion, that some things are due us by a perfect, others by an imperfect right. When what is due us on the former score is not voluntarily given, it is the right of those in enjoyment of natural liberty to resort to violence and war in forcing another to furnish it, or, if we live within the same state, an action against him at law is allowed; but what is due on the latter score cannot be claimed by war or extorted by a threat of the law. (LNN I.VII.VII)

It is indeed right to make requests on the basis of humanity and honourable to grant them, but I may not compel the other party to performance by force either on my own part or on the part of a superior, if he neglects to perform of his own accord; I may only complain of his inhumanity, of his boorishness or insensibility. But I may resort to compulsion when what is due by a perfect promise or agreement is not freely forthcoming. Hence we are said to have an imperfect right [*jus imperfectum*] to the former, a perfect right [*jus perfectum*] to the latter, and similarly to be imperfectly obligated in the former case, perfectly obligated in the latter. (DMC I.IX.IV)

However, unlike Grotius, Pufendorf attempts to explain why certain duties, and not others, must be legally recognized. On at least two occasions, he does so by invoking practical considerations. On one occasion, he says that “all the law courts together would scarcely be adequate to handle this one law [of gratitude] because of the very great difficulty of weighing the circumstances which heighten or lessen the benefit” (DMC I.VIII.VIII). On another occasion, he says that “[o]ften too matters have seemed too trivial to justify troubling the judge with them” (DMC II.XI.V). However, Pufendorf fails to provide a developed explanation based on practical considerations for why only some duties must be

legally recognized. In fact, on both of the above occasions, practical considerations are cited almost as an afterthought to considerations relating to moral motives.

Pufendorf provides two reasons relating to moral motives. The first is that non-legal duties are needed so that one has the opportunity *to act* on a moral motive. The second is that non-legal duties are needed so that one has the opportunity *to show* that one acts on a moral motive, and to win public commendation as a result. Both reasons are stated in the following sentence: “The intention here is that good men should have scope to exercise their virtue [first reason], and to win public commendation for being seen to have acted well without compulsion [second reason]” (DMC II.XI.V; see also DMC I.VIII.VIII). The first reason is problematic since one can act out of respect for a duty even if acting in conformity with that duty is legally required. The second reason is also problematic. It only points to a cost which results from legally recognizing a duty: not winning public commendation. However, a benefit might also result from legally recognizing a duty and outweigh this cost. This objection can be developed by addressing the following three questions. (1) What are the duties that Pufendorf thinks should not be legally recognized? (2) Might a benefit actually result from legally recognizing these duties? (3) If so, does this benefit outweigh the cost of not winning public commendation?

*Question 1:*

The duties that Pufendorf thinks should not be legally recognized are those of care or beneficence. He opposes them to duties incurred on the basis of a pact:

[!]t is to be observed that something is due somebody, either on the basis of the mere law of nature, in such a way, however, that he does not have a perfect right to it, such being the duties of humanity, beneficence, and gratitude; or else, on the basis of a pact, and this either a special pact, or else contained in our obligation to the civil laws, by which we bind ourselves to supply that which the civil laws bid us furnish to a second person. (EUJ I.XVII.VI)

What Pufendorf says about our obligation to the civil laws might entail that if the duties of care or beneficence are enacted into civil laws then they become correlated with perfect rights, just like the

obligations incurred as a result of a “special pact.” However, in the above passage, Pufendorf’s point is clearly that the duties of care or beneficence should not be enacted into civil laws. He goes on to tout that “the genius of those duties requires that they be rendered voluntarily, and without fear of punishment” (EUJ I.XVII.VI).

*Question 2:*

According to Pufendorf, the following is the rationale for enacting civil laws:

[T]hose men who enact civil laws in the commonwealth of men, are completely satisfied if the acts prescribed by the laws are done, whatever in the last analysis the intention of the agents may be, since, forsooth, with their laws they regard the advantage of the commonwealth, which, for the most part, results sufficiently from the external performance of the act, even though, perchance, the agent may not directly intend this advantage. (EUJ I.XVIII.VII)

Consistently with the above rationale, a benefit seems to result from legally recognizing a duty of care or beneficence if both of the following conditions are satisfied:

- (1) Acts in conformity with the duty are advantageous to society *even if* they are performed out of fear of the law rather than out of respect for duty.
- (2) Acts in conformity with the duty are performed *more often* if the duty is legally recognized.

Interestingly, the above two conditions do not seem to yield a single – across the board – answer to whether a benefit results from legally recognizing a duty of care or beneficence. A benefit seems to result from legally requiring some acts in conformity with this duty, but not from legally requiring others. The three examples discussed below serve to illustrate this point; the table that follows captures the relevant features of each example.

- A benefit seems to result from instituting a law that requires driving carefully. It is a good thing if people drive carefully, even if they do so out of fear of tort liability for negligence in the event of an accident rather than out of genuine concern for the safety of others.
- No benefit seems to result from instituting a law that requires wishing others a happy birthday. The value of a birthday wish seems to depend entirely on the intention of the person conveying it.

A birthday wish conveyed for the sake of satisfying a legal requirement would not be valued by the person receiving it.

- Instead of a benefit, a cost possibly results from instituting a law that requires rescuing persons in danger. Landes and Posner (1978) argue that public commendation is to be valued not only for its own sake but also because it encourages action in conformity with duty. In particular, they argue that public commendation is a greater incentive for rescuing persons in danger than the threat of punishment – that instituting a law that requires rescuing persons in danger replaces a social incentive with a *weaker* legal incentive. If they are right, instituting a law that requires rescuing persons in danger actually decreases the number of rescues.<sup>6</sup>

	Condition 1	Condition 2
Driving carefully	✓	✓
Wishing happy birthday	✗	✓
Rescuing from danger	✓	?

*Question 3:*

If a benefit does result from legally requiring an act in conformity with a duty of care or beneficence then perhaps this act should be legally required. It still depends on whether this benefit outweighs the cost associated with legally requiring the act. As suggested in the box below, the case for legal requirement is stronger the greater the number of acts performed as a result of a legal requirement and the lesser the number of acts performed in the absence of a legal requirement. The case for legal requirement is also stronger the more voluntary conformity is commendable and the less a failure to conform is regrettable.

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<sup>6</sup> Lester Hunt develops an argument along similar lines. He argues that introducing a duty to rescue into the positive law of a state undermines the power of what he calls “positive morality” and defines as “a form of social control over individual conduct” (Hunt 1995, p. 18).

- $X$  = # of acts performed in the absence of a legal requirement
- $Y$  = # of acts performed as a result of a legal requirement
- Benefit when the act is legally required ( $B_1$ ) = Benefit from performance of  $X$  + Benefit from performance of  $Y$
- Benefit when the act is not legally recognized ( $B_2$ ) = Benefit from performance of  $X$  + Benefit from public commendation for  $X$
- $B_1 > B_2 \Rightarrow$  Benefit from performance of  $Y >$  Benefit from public commendation for  $X$

The above outlined framework leaves room for Pufendorf to argue that the duties of care or beneficence should never be legally recognized. He could make the argument that in the case of these duties the benefit of greater conformity *never* outweighs the cost of forfeiting public commendation. However, it does not seem that such an argument would be convincing. For instance, in the example of driving carefully, it seems that the benefit of greater conformity does outweigh the cost of forfeiting public commendation. In any case, what does seem clear is that the reason relating to moral motives that Pufendorf provides for why some duties must not be legally recognized is insufficient, given his own insistence that the external performance of acts can itself be advantageous to society. In other words, he has more work to do in his analysis of the duties of care or beneficence before he can tout that “the genius of those duties requires that they be rendered voluntarily, and without fear of punishment” (EUJ I.XVII.VI).

A different explanation Pufendorf provides for why only some duties must be legally recognized is based on a distinction he draws between the mere existence and the improved existence of society. Pufendorf says that “the reason why some things are due us perfectly and others imperfectly, is because among those who live in a state of mutual natural law there is a diversity in the rules of this law, some of which conduce to the mere existence of society, others to an improved existence” (LNN I.VII.VII). However, it is problematic for Pufendorf to assert that only duties that contribute to the mere existence of society must be legally recognized. This assertion is inconsistent with Pufendorf’s own explanation for why individuals (or groups of individuals) abandon their natural liberty – with his own account of the purpose of states.

The avoidance of evil is one important reason for which states are formed according to Pufendorf. He makes this clear in the chapter on the cause of constituting states from *On the Duty of Man and Citizen*. Pufendorf first says that “they judge rightly of the evil of men, and the remedy of that evil, who formulated the saying: ‘Without courts of law, men would devour each other’ (DCM II.V.VII). He adds that “[t]he cause of the constitution of states will become still clearer if we reflect that no other means would have been adequate to restrain the evil in man” (DCM II.V.VIII). He concludes that “[t]ruly the effective remedy for suppressing evil desires, the remedy perfectly fitted to the nature of man, is found in states” (DCM II.V.IX). Since Pufendorf clearly believes that the avoidance of evil is a reason for which states are formed, it seems to make sense that he includes duties that conduce to the very existence of society as legal duties.

However, Pufendorf does not believe that the avoidance of evil is the only reason for which states are formed: “nor is the sole end and use of states the avoidance of evil” (EUJ II.III.V). He believes that the overall purpose of states is “to procure public welfare” (EUJ I.XII.XV). This inclusive purpose that Pufendorf ascribes to states is often reflected in how he draws the limits of the law. For instance, Pufendorf says that “civil laws should regulate only as much as is necessary for the good of state and citizens” and that “nothing should be regulated by the authority of the civil laws unless it has a bearing on the public interest” (DCM II.XI.V; DCM II.XII.III). Now these limits of the law seem to *allow* for the inclusion of duties that conduce to an improved existence of society – after all, duties that conduce to an improved existence of society are “for the good of state and citizen” and have “a bearing on the public interest.” Since Pufendorf believes that public welfare is the overall purpose of states, it does not make sense for him to exclude duties that conduce to an improved existence of society from legal recognition. The distinction between perfect and imperfect duties is essentially drawn in two non-equivalent ways by Pufendorf: legal duties as opposed to non-legal duties and duties that conduce to the mere existence of society as opposed to duties that conduce to its improved existence.

Turning to the issue of conflicts between duties, it is clear that Pufendorf is nominally committed to the priority claim. He boldly asserts that “[a]n imperfect obligation gives way to a perfect obligation” (DMC II.XVII.XIII). He also indicates an endorsement of the two versions of the priority claim that result from the two ways in which he draws the distinction between perfect and imperfect duties: (1) legal duties have priority over non-legal duties and (2) duties that conduce to the mere existence of society have priority over duties that conduce to its improved existence. For instance, consider the following respective passages:

An imperfectly mutual obligation yields to a perfectly mutual obligation which concerns both parties. Thus what is owed on a contract is rather to be paid than what is owed on a gratuitous promise or on the law of gratitude, if it be impossible for both to be satisfied at the same time. (EUJ I.XVIII.XVII)

[T]he reason why some things are due us perfectly and others imperfectly, is because among those who live in a state of mutual natural law there is a diversity in the rules of this law, some of which conduce to the mere existence of society, others to an improved existence. And since it is less necessary that the latter be observed towards another than the former, it is, therefore, reasonable that the former can be exacted more rigorously than the latter. (LNN I.VII.VII)

Pufendorf also expresses commitment to the claim that duties that regulate actions have priority over duties that specify ends – to the priority claim on one way in which the distinction is drawn by Kant, though not by Pufendorf himself. For instance, consider the following passage:

[A]n action otherwise materially, as it were, bad, does by no means become good because of the good intention of the agent. Thence it follows that no one can use his own transgressions in the way of means, as it were, to attain a good end, and things bad are not to be done so that things good may result. For, to have an action made bad, it is sufficient that there be failure on the part of a single material or formal requisite to harmonize with the law. Hence an action becomes bad immediately, if either the quality of the agent, or the object, or the end, or some one of the circumstances, or the intention, be in disagreement with the law. (EUJ I.XVI.II; see also LNN I.VII.IV and LNN II.III.XVII)

Despite expressing his commitment to the priority claim, the answer Pufendorf provides to two practical questions reveals that he is not actually committed to the priority claim. In other words, although he is committed to the priority claim in theory, he is not committed to the claim in practice. The first

question is whether one is permitted to lie when it is done in order to help others. The second question is whether one is permitted to take the property of others when one is in need.

In response to the first question, Pufendorf maintains that lying is always morally forbidden. However, similarly to Grotius, he takes exception to what *counts* as lying. In the following two passages, he asserts that the use of “dissembling and specious language” is not always morally forbidden and that “the reproach of lying” does not always apply to the use of such language:

[T]hose to whom we are speaking are often so situated that it would hurt them and prevent us from achieving the good end we seek if they learned the plain truth in frank and open language. In these cases, therefore, we may make use of a dissembling and specious language which does not directly represent to our audience our meaning and intention. For if I want to help someone, and if I have a duty to do so, I am certainly not obliged to proceed in a way which will defeat my purpose. (DMC I.X.VI)

[T]he reproach of lying is certainly not incurred by those who use dissembling remarks and stories to children or child-like persons, so that they may more easily grasp their meaning, when they cannot take the naked truth. The same is also the case with those who employ dissembling discourse for a good end which they could not attain by plain speech: for example, to protect the innocent, placate the angry, comfort the mourning, give courage to the fearful, encourage the squeamish to take medicines, break the stubbornness of one or subvert the evil design of another, draw a veil, so to speak, of fabricated rumours over secrets of state and policies which must be kept from the knowledge of others and divert misplaced curiosity, or use the stratagem of deceiving with false stories an enemy whom we might openly injure. (DMC I.X.IX)

Given the above, Pufendorf clearly believes that one is permitted to intentionally deceive others by using specious language when one does so in order to bring about a good end. He clearly rejects the priority of duties that regulate actions over duties that specify ends.

The difference between Grotius and Pufendorf is only in *how* they account for ends in their definitions of lying. As explained in the previous section, Grotius accounts for ends through the notion of a “right to liberty of judgment.” According to him, in order for what one says to count as a lie it must violate a right to liberty of judgment and whether it in fact does so depends on whether it brings about a good end. In contrast, Pufendorf does not appeal to any such right. He accounts for ends through the

notion of a “moral truth.” According to him, in order for what one says to count as a lie it must be morally false and whether it in fact is morally false depends on whether it brings about a good end.

Unfortunately, Pufendorf does not elaborate sufficiently on what he means by a moral truth or by a moral falsehood. The following is possibly the most revealing passage: “[W]e are not always telling a lie when we say, and say deliberately, what does not exactly correspond either with the facts or with our thoughts. Hence what we might call ‘logical truth,’ which consists in the congruence of words with things, does not altogether coincide with ‘moral truth’” (DMC I.X.VII). From this passage, it can be inferred that it is not the case that a proposition is morally true if and only if it corresponds with the facts or with our thoughts – this would be a logically true proposition and the two are not the same. Perhaps a proposition is morally true if and only if a good result comes about from others *believing* that it is true, to use Pufendorf’s own terminology, from others believing that it is logically true. Such a definition would be consistent with the view that even if what one says does not correspond with the facts or with one’s thoughts it does not count as a lie if a good result comes about from saying it. In any case, what does seem clear is that Pufendorf rejects the priority of duties that regulate actions over duties that specify ends in his handling of the case of lying.

In response to the second question, Pufendorf maintains that stealing is always morally forbidden. However, once again similarly to Grotius, he takes exception to what *counts* as stealing. He asserts that taking what belongs to others by force or stealth does not always constitute an act of theft or robbery:

Anyone who through no fault of his own is in extreme want of food or clothes to protect him against the cold and has not succeeded by begging, buying or offering his services in persuading those who have wealth and abundance to let him have them of their own accord, may take them by force or stealth without committing the crime of theft or robbery”. (DMC I.V.XXIII; see also LNN II.VI.V)

In the above passage, Pufendorf claims that the end of providing for oneself when in need can justify the act of taking what belongs to others. As in his handling of the case of lying, he rejects the priority of duties that regulate actions over duties that specify ends.

The difference between Grotius and Pufendorf is in *how* they justify the view that one is permitted to take the property of others when in need. Pufendorf explicitly rejects the justification that Grotius provides. He first presents Grotius's justification:

Grotius, Bk. II, chap. ii, § 6, has undertaken to solve this difficulty [of justifying the permissibility of taking the property of others when in need] in the following way: Those who first introduced the distinct ownership of particular things are understood to have added to it the limitation that the force of ownership, whereby others are excluded from the use of a person's own property, should expire, in case the other person cannot be kept alive without the use of the same; and so, in a case of such necessity, private property, without which another must surely die, is understood to revert to original common ownership. Or, in other words, when men first instituted distinct ownership, all individually entered into agreement to keep their hands off the property of others, except in so far as the owners allow them, with the reservation, however, that at the urge of extreme necessity anyone's possession, without which a person's life could not be preserved, was to be used as if it belonged to all. (LNN II.VI.VI)

He then gives three reasons for why he thinks Grotius's justification is problematic:

But in this theory there are matters which can be questioned. [1] For if, under stress of necessity, any man secures the right to appropriate the property of others to his own use, as if it lay open to all, there appears no good reason why any man, if he is strong enough, may not take such possessions from their owner, even if the latter is straitened by an equal necessity. But this is not allowed by Grotius. [2] Furthermore, certainly no restitution need be made of things of this kind, which I take as my right, on the ground that they are open to all; and yet Grotius requires such restitution. [3] Also a distinction should be made between the case in which a man fell under such necessity through no fault of his, and that in which his own sluggishness and negligence are to blame. Unless such a distinction is drawn, a right is apparently given to lazy scoundrels who have fallen upon want through idleness, whereby they may appropriate to themselves by force what has been secured by the labour of others. (LNN II.VI.VI)

He concludes by formulating his own alternative justification:

And so, in my opinion, this matter is better explained on our theory, if we say that a man of means is bound to come to the aid of one who is in innocent want, by an imperfect obligation, which no one should, as a rule, be forced to meet; and yet the urge of supreme necessity makes it possible for such things to be claimed, on the same ground as those which are owed by a perfect right, that is, a special appeal may be

made to a magistrate, or, when time does not allow anything of the sort, the immediate necessity may be met by taking the thing through force or stealth. For the reason why only an imperfect right is allowed, especially to such things as are owed on the grounds of humanity, is that thereby a man finds the opportunity to show that his mind is intent upon voluntarily doing his duty, and at the same time possesses the means to bind others to him by his kindness ... [W]hoever refuses to show humanity should lose his property as well as his merit. (LNN II.VI.VI)

In stating his alternative justification, Pufendorf seems to assign legal weight to the duty to provide aid. He appears to establish an ordering *within* the legal sphere. Indeed, he says that “a special appeal may be made to a magistrate” which suggests that the duty to provide aid is a legal duty and has priority over another legal duty, the duty to respect private property. However, it does not seem that Pufendorf can defend the view that the duty to provide aid carries any legal weight. This is because in stating his justification Pufendorf emphasizes that one can appeal to a magistrate *only if* the owner refuses to voluntarily provide what is needed. If this is a necessary condition, how then can the duty to provide aid be thought of as a legal duty? At first, it might seem that there are two possibilities:

- (1) The duty to provide aid is a merely moral duty until it is clear that the owner refuses to help, at which point it becomes a duty that is also legal (it acquires a legal status).
- (2) The duty to provide aid is a legal duty for the entire period during which the owner has the opportunity to help but becomes *enforceable* only when it is clear that the owner refuses to help.

However, upon consideration, neither one of these two options is acceptable.

According to the first option, the duty to provide aid only becomes a legal duty once it is clear that the person bound by the duty refuses to act in conformity with it. If the legal duty to provide aid is thought of in this way then it is a legal duty that, when in existence, is necessarily violated. It is a law that cannot but be broken. However, this goes against an important intuition we seem to have about legal rights and obligations: they *can* be respected. This option must be rejected on theoretical grounds.

According to the second option, the duty to provide aid is similar to a duty one incurs by way of a contract that requires one to pay a sum of money by a specified point in time in the future. The contractual duty is a legal duty from the moment it comes into existence, from the moment the contract comes into effect, but is enforceable only when the specified period of time to pay the sum of money has elapsed. However, the legal duty to provide aid cannot be thought of in this way because it overlooks the very reason for which Pufendorf emphasizes that one can take legal action *only if* the owner refuses to voluntarily provide what is needed: so that “a man finds the opportunity to show that his mind is intent upon voluntarily doing his duty, and at the same time possesses the means to bind others to him by his kindness” (LNN II.VI.VI). If the duty to provide aid is legal from the moment it comes into existence then, though one can still act out of respect for it, one’s ability to show that one has acted out of respect for it – to show one’s good intentions – is severely undermined if not eliminated. A property owner who appears to take the initiative to help would be suspected of doing so out of fear of the law rather than out of respect for duty, similarly to how a contractually-bound person who appears to take the initiative to pay a sum of money is suspected of doing so in order to avoid legal consequences rather than out of the goodness of his heart.<sup>7</sup> In fact, Pufendorf himself argues that it is not possible to show that one acts *from a moral motive* in conformity with a duty if the duty is legally recognized. He thinks that some duties ought to remain extralegal precisely because this

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<sup>7</sup> It might seem that the contractually-bound person can show good intentions by paying the sum of money in advance of the due date, since he is not legally required to pay in advance. However, it does not follow from the fact that he pays in advance that he would make the payment even if it were left up to him, that he actually cares to do what is right. If it is a legal requirement then he anyway has to make the payment and he might just choose to make it early in order to get this requirement out of the way as soon as possible. Moreover, even if it is possible for him to show good intentions by paying early, the same does not seem to apply by analogy to the property owner who is bound by a legal duty to provide aid. In the case of the legal duty to provide aid, there is no clearly specified point in time after which the person in need can have recourse to legal action. It is not clear to the property owner when he becomes susceptible to the charge of “refusing to help” and, as a result, a legal incentive is in place early on for him to help.

would allow “good men” to “win public commendation for being seen to have acted well without compulsion,” as has already been discussed (DMC II.XI.V; see also DMC I.VIII.VIII).<sup>8</sup>

Now in theory, it is possible for Pufendorf to hold on to the claim that the duty to provide aid is legal in nature by dropping the following clause: *only if* the owner refuses to voluntarily provide what is needed. His view would then be that when in need one is allowed to immediately appeal to a magistrate or to seize the property of another, without it being required to give the owner the chance to provide it voluntarily. But given textual evidence, it is clear that Pufendorf would not be willing to make this change. Pufendorf has a clear reason in mind for why he stipulates that one can appeal to a magistrate *only if* the owner refuses to voluntarily provide what is needed – the reason, again, is so that “a man finds the opportunity to show that his mind is intent upon voluntarily doing his duty, and at the same time possesses the means to bind others to him by his kindness” (LNN II.VI.VI). In fact, Pufendorf thinks that it is in the case of the duty of providing aid to someone in need that one has the greatest opportunity to show one’s good intentions:

[I]t is agreed that among all people the greatest weight attaches to a kindness if it relieves extreme distress; while there is no ground for gratitude if a person does for another only what the latter might have taken by force on his own right, and as if it were coming to him. (LNN II.VI.VI)

Therefore, eliminating this opportunity in order to maintain the legal nature of the duty would clearly come at too high a cost. Pufendorf cannot maintain that the duty is legal in nature.

Several commentators have highlighted the critical importance that showing one’s good intentions plays in Pufendorf’s account of the duty to provide aid to someone in need. For instance, Salter states the following:

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<sup>8</sup> It might seem that this reason was challenged when it was previously discussed and so seem surprising that it is now cited favorably. However, this reason was not previously challenged *per se*. What was challenged is that this reason is *good enough* for not legally recognizing some duties, the duties of care or beneficence in particular. It was argued that Pufendorf only mentions a cost associated with legally recognizing them and fails to consider whether a benefit also results from legally recognizing them that might outweigh this cost. The following point Pufendorf makes, referred to above, was *not* previously challenged: people no longer have the opportunity to show their good intentions for acting in conformity with a duty if the duty is legally recognized.

[A] reason why Pufendorf rejected Grotius' theory was that one of the primary purposes of private ownership, according to Pufendorf, was to give individual owners the opportunity to show compassion and generosity to the needy, thereby winning their gratitude. Granting the needy such an unrestricted right to take from an unwilling owner denied property holders the opportunity of fulfilling this humanitarian duty, thus defeating a primary reason for private ownership. (Salter 2005, p. 297)

In the same vein, Istvan Hont and Michael Ignatieff assert the following:

By means of this distinction between 'perfect rights' and 'imperfect obligations', Pufendorf managed to find a way to provide for the poor without granting them, as Grotius did, a property right in the goods of the rich in times of necessity. In his theory, the poor simply came into a right by default of someone else's obligation. This obligation derived not from the law of property, but from the natural law of humanity. The shift between Grotius and Pufendorf is decisive. In one, the focus was upon the rights of the poor, while in the other, it was upon the voluntary obligations of the rich. The implied nexus of relations between rich and poor shifted from the grounds of law to that of moral sentiment, benevolence on one side, gratitude on the other. (Hont and Ignatieff 1983, p. 31)

Though true, what these commentators say seems to require a more elaborate explanation. How *exactly* is Pufendorf's account supposed to work? In other words, if the duty to provide aid to someone in need remains merely moral at all times, and if the legal right to private property remains existent and non-overridden by any other legal consideration at all times, how then does someone in need become at some point permitted to take the property of another?

The following seems to be the answer: when it is clear that the owner refuses to help, the merely moral right to receive aid trumps the legal right to private property or, equivalently, the merely moral duty to provide aid trumps the legal duty to respect private property. In other words, the priority claim is reversed: a non-legal duty comes to have priority over a legal duty. In what follows, this reversal of the priority claim is further discussed and clarified. Moreover, it is shown that there is textual basis for this interpretation, independently of the attempt to salvage as much as possible of what Pufendorf says in the above passage.

When the terms perfect duty and imperfect duty are used to denote respectively legal duty and non-legal duty, the priority claim amounts to the following: one is never *morally* permitted to break the law. Indeed, the priority claim can only make sense from the perspective of morality. From the

perspective of the law, it is a non-issue whether a legal duty has priority over a non-legal duty: only legal duties are recognized by the law, and so, of course, legal duties have priority. The reversal of the priority claim in a given instance amounts to the following: one is at least morally permitted, if not morally required, to break the law in this instance.

Therefore, on the reading of Pufendorf here suggested, when it is clear that the owner refuses to help, the person in need becomes morally permitted to break the law and seize his property. The moral license to seize the property of another when in need is restricted by the fact that one is required to give the owner a chance to give what is needed voluntarily. And since this license to seize the property of another is merely a moral license, it does not coerce the owner to act before the license comes into effect as it would if it were a legal license. The owner is surely not afraid of a mere moral license that will at some point come into effect. As a result, on this reading of Pufendorf, the ability of the owner to show moral intentions and the license of the person in need to seize the property of the owner do not conflict with one another.

Furthermore, on this reading, it becomes perhaps useful to distinguish between two senses of “robbery” or “theft” – the legal sense and the moral sense. In the legal sense, the person in need does in fact commit theft when he takes the property of another, even though the other has refused to provide it voluntarily. In its legal sense, the term theft is not redefined by Pufendorf such as to allow exceptions for situations of need. However, in the moral sense, the person in the above-described situation does not commit theft. In its moral sense, the term theft is redefined by Pufendorf such as to allow exceptions for situations of need.

In sum, the reversal of the priority claim is hidden or implicit in what Pufendorf says in the above passage if one tries to make as much logical sense out of it as possible. Furthermore, as already mentioned, there are passages in which Pufendorf explicitly rejects the priority claim, without the need for a charitable interpretation. Most noteworthy is the fact that Pufendorf never says that one has a

perfect right to receive aid from others when one is in need. Yet this is how one would expect him to express the view that the right in question is a legal right. What Pufendorf does say is that the imperfect right to receive aid from others is of no less *importance* or *strength* than a perfect right in situations of need – that the non-legal right to receive aid from others is not overridden by a legal right in situations of need. For instance, Pufendorf asserts the following: “Though what is due on the basis of humanity may absolutely not be taken by force in normal circumstances, still extreme necessity has the effect of providing a right to such things no less than to things which are due on the basis of perfect obligation” (DMC I.V.XXIII; see also LNN II.VI.VI). His words here directly reject the priority claim.

*Conclusion:*

Pufendorf draws the distinction between perfect and imperfect duties in two non-equivalent ways: legal duties as opposed to non-legal duties and duties that conduce to the mere existence of society as opposed to duties that conduce to its improved existence. Furthermore, although Pufendorf expresses commitment to the priority claim in theory, he is not committed to the claim in practice. Now on several occasions, J.B. Schneewind, who has written extensively on the distinction between perfect and imperfect duties, has asserted that: “Pufendorf has a more theoretical cast of mind than Grotius, and pushes further in the direction of explicit clarification than his master. Thus he not only accepts the Grotian distinction between perfect and imperfect rights and duties, he tidies it up as well” (Schneewind 1987, p. 141).<sup>9</sup> However, since Grotius draws the distinction in only one way whereas Pufendorf draws it in two, and since Pufendorf asserts the priority claim but goes on to reject it whereas Grotius simply never asserts it, the opposite of what Schneewind says seems to in fact be true. It is with Pufendorf that an originally tidy distinction starts to get out of hand.

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<sup>9</sup> See also Schneewind (1997, p. 18-20), where this assertion is repeated word for word, and Schneewind (1996, p. 59). Wolfgang Kersting also makes this assertion; see Kersting (1982, p. 187).

#### IV. Christian Wolff

The supreme principal of Wolff's practical philosophy is "do what makes you and your condition, or that of others, more perfect; omit what makes it less perfect" (Discourse 12-16). Wolff fleshes out his perfectionist ethics in an early letter to Leibniz:

I need the notion of perfection for dealing with morals. For, when I see that some actions tend toward our perfection and that of others, while others tend toward our imperfection and that of others, the sensation of perfection excites a certain pleasure [*voluptas*] and the sensation of imperfection a certain displeasure [*nausea*]. And the emotions [*affectus*], by virtue of which the mind is, in the end, inclined or disinclined, are modifications of this pleasure and displeasure; I explain the origin of natural obligation in this way... From this also comes the general rule or law of nature that our actions ought to be directed toward the highest perfection of ourselves and others. (Letter to Leibniz 231-232)

Wolff's supreme principle is coupled with the following dictum: "whoever seeks to make himself as perfect as possible seeks also what others seek and desires nothing at their expense" (Discourse 43). He justifies the view that perfection cannot be obtained through selfish behavior by appealing to the fact that humans are social beings and that therefore moral perfection entails showing kindness towards others.

Wolff uses the term "conscience" in order to designate one's ability to know what is good or bad in action, and what one ought or ought not to do (Discourse 73, 78). What Wolff calls "perfect duties" are the duties of conscience. They are the commands that one determines, through one's own reasoning, to be good. Their status as duties does not result from a human agreement but from the fact that one deems them to contribute to human perfection.<sup>10</sup> In contrast, obligations *contracted* to one another are described as "imperfect duties" by Wolff. He discriminates between a "necessary" and a "voluntary" law of nature: between the law of nature that refers to the realm of non-legal perfect

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<sup>10</sup> Wolff does not seem to provide a way of sorting out controversies in respect of different reasons given by different people for what is good – for what brings about human perfection. It seems that the best we can hope for is that different individuals nonetheless come to the same conclusion about what is good, or that they are able to disagree about what is good while coexisting with one another in the same society.

duties, on the one hand, and the law of nature that refers to the realm of legal imperfect duties, on the other.

In his discussion of promise-keeping, Wolff makes clear that he thinks that non-legal duties have priority over promises of any sort (including contracted duties). He holds that a promise binds only because of the good the promised act will bring about. Promising as such adds nothing to the obligation to do the act, and if it turns out that one would obtain more good from breaking one's promise than another would get from one keeping it, one should break it. If someone's conscience should tell them to break a promise, then they should simply break it (Ethics 769-72, 1003-6). Given Wolff's discussion of promise-keeping, it is clear that, as Ben Holland aptly puts it, "Pufendorf's perfect/imperfect duties distinction, which Wolff made crucial use of, saw its bases entirely reversed" (Holland 2011, p. 4).

*Conclusion:*

Similarly to Grotius and Pufendorf, Wolff draws the distinction between perfect and imperfect duties based on the consideration of legal recognition. However, Wolff reverses the relationship. He terms non-legal duties "perfect" and legal duties "imperfect." Moreover, although Wolff nominally maintains the priority claim, he in effect asserts the claim's opposite. He prioritizes duties his predecessors label as "imperfect" over duties that they label as "perfect."

### Chapter 3: Kant's Drawing of the Perfect-Imperfect Distinction

#### I. Introduction

Kant gives examples of perfect and imperfect duties and also gives a number of different explanations of why these duties are so classed. In this chapter, I will see whether any of these explanations are adequate.

#### II. Contradiction in Conception and in Will

One way in which Kant draws the distinction between perfect and imperfect duties is by appealing to the test of the universalizability of maxims. According to Kant, both maxims opposed to perfect duties and maxims opposed to imperfect duties fail the test of universalizability. But importantly, the *reason* for which the maxims fail the test is not the same. In the case of perfect duties, the reason is that one cannot coherently *conceive* of a world in which the maxim is a universal law whereas, in the case of imperfect duties, the reason is that one cannot *will* (i.e. rationally want) a world in which the maxim is a universal law. This way of distinguishing between perfect and imperfect duties appears several times in Kant's *Lectures on Ethics*, for example: "With perfect duties, I ask whether their maxims can hold good as a universal law. But with imperfect ones, I ask whether I could also will that such a maxim should become a universal law" (VE.M 29:609; see also VE.M 29:610 and VE.V 27:496).<sup>11</sup> It is also set forth in the *Groundwork*: "Some actions are so constituted that their maxim cannot even be *thought* without contradiction as a universal law of nature ... In the case of others that inner impossibility is indeed not to be found, but it is still impossible to *will* that their maxim be raised to the universality of a law of nature because such a will would contradict itself. It is easy to see that the first is opposed to strict or narrower (unremitting) duty, the second only to wide (meritorious) duty" (G 4:424).<sup>12</sup>

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<sup>11</sup> For all abbreviations of Kant's work, see section I of the bibliography.

<sup>12</sup> In this passage, and in some others, Kant divides duties into "strict," "narrow," and "unremitting," on the one hand, and into "wide" and "meritorious," on the other. However, in so doing, Kant does not mean to be

However, trying to distinguish between duties based on why maxims contrary to them cannot be universalized – based on whether maxims fail the contradiction in conception test or the contradiction in will test – is problematic. This is because, as is well known, the contradiction in conception test is itself flawed. A first problem with the test is that it proves too much: some commands that are identified as duties by applying the test are not duties at all. For example, Marcus Singer has shown that the test yields a duty to accept bribes. Indeed, it is not possible to conceive of a world in which the maxim of refusing bribes is a universal law since the very institution of bribery would collapse in such a world.<sup>13</sup> A second problem is that the contradiction in conception test requires making some empirical assumptions. Given that it requires making empirical assumptions, the test cannot be used in order to prove duties *a priori*. Moreover, if the empirical assumptions are false then the test only establishes duties for those living in some possible world rather than for those living in the actual world. For example, based on the empirical assumption that no one is gullible (i.e. no one will simply believe whatever you tell them) the contradiction in conception test yields a duty not to lie. Indeed, in a world in which no one is gullible, it is not possible for everyone to lie in order to borrow money. But, if some people are gullible – as is the case in the actual world – then it is far less clear that it is not possible for everyone to lie in order to borrow money. It seems that everyone would be able to lie as long as everyone made sure to lie to the right persons: those who are gullible. In what follows, a third problem is presented which is that whereas perfect duties are supposed to admit of no exceptions, as discussed in section III, the contradiction in conception test does *not* yield this result in the case of some perfect

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introducing a new division of duties in addition to the division into perfect and imperfect. These are different ways in which Kant refers to the *same* division. Indeed, Kant clearly explains that he only adopts two divisions of duties: “[1] into duties to ourselves and to other human beings and [2] into perfect and imperfect duties” (G 4:422). Since the division of duties in the above passage clearly does not correspond to whether the duties are to ourselves or to others, it must correspond to whether they are perfect or imperfect.

<sup>13</sup> See Singer (1961).

duties. In particular, it is shown that the contradiction in conception test does not yield the result that the duty not to lie admits of no exceptions.

Kant argues that it is not possible for us to conceive of a world in which the following maxim is a universal law: “when I believe myself to be in need of money I shall borrow money and promise to repay it, even though I know that this will never happen” (G 4:422). Kant’s argument goes as follows: if everyone adopted this maxim then no one would be willing to lend money; therefore, it is not possible to conceive of a world in which everyone lies in order to borrow money when in need since the very institution of borrowing and lending money would not exist in such a world. Kant concludes that we have a duty *never* to lie. Assuming that no one is gullible, it is true that a world in which everyone *always* lies in order to borrow money is inconceivable. But this inconceivability merely yields the duty not to *always* lie, a permissive duty which allows us to lie on occasion. In order to yield a duty *never* to lie, what must be shown is that a world in which everyone *sometimes* lies is inconceivable. The following is the maxim that must be considered: “Sometimes, when I borrow money and promise to repay it, I know that I will never repay.” But the institution of lending money does *not* necessarily breakdown in a world in which everyone adopts this maxim, as shown below, and so it is possible to conceive of a world in which this maxim is a universal law.

For simplicity, suppose that each borrower borrows every time from the same lender a quantity  $X$  and promises to repay a quantity  $X + k$ . Also, suppose that borrowers lie once out of every  $T$  times and do not repay anything on this occasion.<sup>14</sup> Will the borrowing/lending breakdown? From the perspective of a profit-maximizing lender, with whom the matter rests, the accounting is as represented in the box below.

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<sup>14</sup> The motive for why borrowers do not lie all the time may well be one of prudence: each borrower realizes that if he lies all the time then he will not find anyone to lend him money.

- Revenue from Lending (RL) =  $(T - 1).(X + k) - X$
- Revenue from not Lending (RN) =  $T.X$
- $RL > RN \Rightarrow [ k.(T - 1)/2X ] > 1$

Whether lenders should not engage in transactions with borrowers because borrowers sometimes lie to them depends on contingent factors, and specifically on the values of  $k$ ,  $X$ , and  $T$ . *Ceteris paribus*, lenders are more likely to engage in transactions with borrowers the lower the value of  $X$  and the higher the values of  $k$  and  $T$ . Moreover, as long as borrowers lie to lenders rarely enough (as long as the value of  $T$  is high enough relative to those of  $k$  and  $X$ ), the institution of borrowing/lending does not breakdown. Therefore, as long as the lying does not occur too frequently, the maxim of sometimes lying *can* be thought of as a universal law. Since the contradiction in conception test does not prohibit us from lying sometimes, and since in carrying out the test no restriction was imposed on the condition we (the borrowers) must be in when we do lie, it follows that the test does not prohibit us from sometimes lying *when in need*. Thus, neither the duty never to lie nor the duty never to lie when in need is generated by the test.

It would still be interesting to determine whether the test also does not generate a prohibition against *always* lying when in need, once again assuming that no one is gullible. Unfortunately, the answer is less clear in this case, as there are two plausible approaches to determining the answer which do not yield the same result. One approach consists in reasoning as follows: (1) determine how often one can lie based on the accounting analysis presented above, (2) determine how often one is in need, and (3) conclude that no such prohibition is generated if and only if the first of these two values is greater than the second. Another approach consists in testing whether it is possible to conceive of a world in which the following maxim is a universal law: "When in need, lie in order to borrow money."<sup>15</sup>

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<sup>15</sup> The form of this maxim has been helpfully specified by Henry Allison as follows: "When in S-type situations, perform A-type actions" (Allison 1990, p. 89-90).

Whether it is possible to conceive of a world in which this maxim is a universal law depends on how often *all of us* are in need, and requires more complex accounting than presented above since different values of T are assigned to each person. If the first approach is adopted then whether it is prohibited to always lie when in need will vary from person to person (depending on how often each person is in need), whereas if the second approach is adopted then the prohibition, if it applies, will apply to all.

*Conclusion:*

The conclusion of this section is that trying to distinguish between perfect and imperfect duties based on why maxims contrary to them cannot be universalized is problematic. This is because the contradiction in conception test is itself flawed: some of the results that it yields are not the ones that Kant wants it to yield.

### III. Latitude in Execution

In the *Metaphysics of Morals*, Kant states that – in the case of imperfect duties – the Moral Law “leaves a playroom (*latitudo*) for free choice in following (complying with) the law, that is, that the law cannot specify precisely in what way one is to act and how much one is to do by the action for an end that is also a duty” (MS 6:390). Also, in his *Lectures on Ethics*, Kant says that “[l]aws determine the obligation to an action both *stricte* and *late*”; he explains that “[l]eges *stricte determinantes* are those which determine not only the nature of the obligation, but also the degree of it, i.e., whether, when and how much needs to be done; as in buying and selling, for example” whereas “[l]eges *late determinantes* determine only the nature, not the degree, of obligation to the action, so that in the fulfillment itself a certain latitude is left open” (VE.V 27:536).<sup>16</sup> But, whether duties allow latitude in their execution is not as unobjectionable a criterion for distinguishing between them as it might at first seem. In what follows, two possible problems are discussed. However, attempt is also made to

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<sup>16</sup> As explained in footnote 3, Kant understands the division into “*stricte*” and “*late*” to be the same as the division into perfect and imperfect.

overcome these problems. Also discussed is whether latitude in the execution of duties allows for considerations – pertaining to the relation one stands in towards others – to play a role in moral deliberation.

The first problem is that even though Kant *says* that some duties allow for latitude, namely the imperfect ones, he also at times seems committed to the view that there can be no latitude in the execution of duties. The following passage, from the *Critique of Judgment*, is especially suggestive: “where the moral law speaks there is, objectively, no further room for free choice with regard to what there is to be done” (KU 5:210). However, it is questionable that the passage is evidence that Kant holds the above view. In particular, whether it is evidence seems to depend on how the turn of phrase, “where the moral law speaks,” is interpreted.

On one interpretation, the turn of phrase is understood as a reference to the commands of duty: it is the commands of duty which are what the Moral Law “speaks.” Based on this interpretation, the passage does seem to imply that – in applying a duty – there can be no “room for free choice with regard to what there is to be done.” But, on another interpretation, the turn of phrase is understood as a reference to what ought to be done *in a given situation*: it is prescriptions about specific courses of action that are what the Moral Law “speaks.” Based on this second interpretation, the passage seems to imply that – when a specific course of action is prescribed by the Moral Law – there is no “room for free choice with regard to what there is to be done.” On this interpretation, the passage is compatible with there being some duties which allow latitude in execution. This is because the passage does not assert that the Moral Law *always* prescribes a specific course of action, but only that *when* the Moral Law does prescribe a specific course of action, as Kant thinks it does in the case of perfect duties, there can be no latitude in execution.

The second problem is that *all* duties allow for some latitude in execution, and so it does not seem possible to distinguish between duties based on this consideration. Indeed, even duties that we

ought to perform when buying and selling, which Kant cites as prime examples of duties that do not allow for latitude, do in fact allow for some latitude. That this is so is clearly brought out in the following example by Roderick Chisholm:

If it is my duty to pay you ten dollars then I have latitude in that I may pay by cash, check, or money order; or if it is my duty to pay you in cash, then I may pay by giving you a ten, or fives, or ones; or if it is my duty to give you a ten, then I may give you this one, that one, or the other one; or if it is my duty to give you this one, then I may hand it to you with the face looking up, or down, or right, or left; and so on, *ad infinitum*. (Chisholm 1963, p. 4)

More generally, for any act-type, there are innumerable act-tokens that fall under it. This is true no matter how much detail is included in the description of the act-type since it is always possible to include further detail in the description of the act-tokens.<sup>17</sup>

Recognizing that all duties allow latitude in execution, George Rainbolt has argued that “the difference between perfect and imperfect obligations is a matter of degree,” and specifically that the former are those that allow *less* latitude than the latter (Rainbolt 2000, p. 238). However, this is not a very helpful suggestion. First, ranking duties in order of latitude is not always straightforward. This is because a duty can allow for more latitude than another duty, in one respect, yet less latitude than that same other duty, in a different respect. Indeed, the same duty can allow for different degrees of latitude depending on whether latitude is considered with respect to time, to place, to manner, or to object. Second, even if one succeeds in ranking duties in order of latitude, there remains the problem of vagueness. It is not clear after which point, on a scale of degrees of latitude, a duty counts as imperfect rather than as perfect.

A different solution for preserving a distinction based on latitude has been proposed by Thomas Hill. Hill distinguishes between three senses in which a duty, which he refers to as a “principle,” can be said to allow for latitude in execution:

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<sup>17</sup> For a helpful discussion of the relation between act-tokens and act-types, see Stocker (1967).

- (1) There is “room for judgment in deciding whether or not a given principle is relevant to a particular situation.” (Hill 1971, p. 61)
- (2) We are free “to choose various ways of satisfying a principle in a particular situation once we decide that the principle applies.” (Hill 1971, p. 61)
- (3) We are free “to choose to do x or not on a given occasion, as one pleases, even though one knows that x is the sort of act that falls under the principle, provided that one is ready to perform acts of that sort on some other occasions.” (Hill 1971, p. 61)

Hill acknowledges that all duties allow latitude in the first two senses. However, he maintains that only some duties allow latitude in the third sense, and says that it is these duties that Kant refers to as imperfect.

To begin with, Hill’s solution is not to be confused with the one by Jens Timmerman. Pointing to the fact that Kant sometimes refers to imperfect duties as “contingent,” Timmerman suggests that there is not always occasion to fulfil an imperfect duty whereas there is always occasion to fulfil a perfect duty. He provides the following example: “There is not always occasion to help, but there is always occasion not to lie” (Timmerman 2005, p. 22). Timmerman’s way of drawing the distinction is unconvincing, however, since there is *not* always occasion to fulfil a perfect duty. For example, if there is no one in my presence, and so no one with whom I can communicate, then this is not an occasion on which I can fulfil the duty not to lie. It is true that I do not violate the duty not to lie on this occasion. But, fulfilling the duty not to lie seems to also require the *possibility* of violating the duty – a possibility which does not obtain on this occasion. In any case, Hill’s solution is different from the one by Timmerman since Hill’s point is not that there is not always occasion to fulfil an imperfect duty, but rather that, even when there is occasion to fulfil an imperfect duty, one is not obligated to do so.

An objection to Hill’s solution can be stated as follows: if there is a person in distress then one *must* help this person; therefore, one cannot always choose not to perform an act in conformity with

an imperfect duty (specifically, the imperfect duty of beneficence). The following example, by Walter Schaller, helps make the point that one must help a person in distress: “Suppose Alice is walking home one day and notices a small child stumble into a wading pool. Only in rare and extreme circumstances would Alice be morally free to decide whether to save the child from drowning or how much assistance to give (e.g. to pull the child from the water but not try to restore its breathing or alert its parents). In this kind of situation, the circumstances dictate what Alice is morally bound to do” (Schaller 1987, p. 302).

Schaller qualifies what he says with the clause “only in rare and extreme circumstances,” and it is admittedly possible to think of counterexamples to the claim that one *must* help a person in distress. For example, one is under no such obligation if (a) the person in distress is already being helped as much as can be by someone else, or (b) one is already devoting all of one’s resources to helping another person who is also in distress. Consistent with these considerations, Kant’s view seems to be that if a person is in distress then this fact must be taken into account in determining what one ought to do, but that this is still not the only fact that must be taken into account. Indeed, in his *Lectures on Ethics*, Kant says that how much I should help is “reserved to the measure of my needs, my resources, and the other’s distress” (VE.V 27:536; see also MS 6:393). Therefore, the objection to Hill’s solution must be stated in a way that does not rule out the possibility that there are good reasons for not helping a person in distress. The following formulation seems more adequate: if there is a person in distress then the fact that one is willing to help on other occasions cannot serve as the *reason* for not helping on this occasion; in other words, it is not true that, *provided that* one is willing to perform acts in conformity with an imperfect duty on other occasions, one can always choose not to perform an act in conformity with the same imperfect duty on this occasion.

It is tempting to salvage Hill’s solution by dividing the duty of beneficence into two: a duty to help others in distress, which is perfect, and a duty to help others who are not in distress, which is

imperfect. But, with the exception of one fleeting comment in his *Lectures on Ethics*, in which Kant says that “to help those in distress, for example, is a strict duty,” Kant’s considered view seems to be that the duty of beneficence is imperfect and that this imperfect duty *can* account for what one ought to do in situations of distress (VE.V 27:584). In the *Metaphysics of Morals*, where he presents his system of duties more formally, Kant alternates between speaking about a duty of “beneficence” and one of “benevolence, and also between speaking about promoting the “good,” the “well-being,” and the “happiness” of others. But, Kant consistently affirms that the duty of helping others is imperfect, and he never mentions the case of helping others in distress other than when discussing this imperfect duty. Not only does Kant not discuss situations of distress separately, but there is also reason to believe that Kant thinks there is a close connection between the imperfect duty of beneficence and considerations pertaining to situations of distress. Indeed, in both the *Groundwork* and the *Metaphysics of Morals*, Kant justifies the imperfect duty of beneficence by appealing to the consideration that we would want to be helped were we to regrettably find ourselves *in need*. In the *Groundwork*, he says that we would not will to live in a world devoid of beneficence because “many cases could occur in which one would need the love and sympathy of others” (G 4:423). In the *Metaphysics of Morals*, he says the following:

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. For everyone who finds himself in need wishes to be helped by others. But if he lets his maxim of being unwilling to assist others in turn when they are in need become public, that is, makes this a universal permissive law, then everyone would likewise deny him assistance when he himself is in need, or at least authorized to deny it. (MM 6:453)

Thus, Hill’s solution cannot be salvaged by dividing the duty of beneficence. An explanation of the distinction between perfect and imperfect duties that requires breaking up what is arguably Kant’s favorite example of an imperfect duty into two separate duties, one of which is said to be perfect, cannot claim to elucidate Kant’s own way of drawing the distinction. It might also have its own

difficulties, in drawing a clear distinction between cases of distress and other cases in which help could be given.

It might still be possible to distinguish between duties based on latitude while respecting Kant's classification of duties. In particular, the following claim, which is an amended version of the claim in (3), seems true of imperfect duties, including the duty of beneficence, while false of perfect duties:

(3\*) *Sometimes* (i.e. on some occasions), we are free to choose to do x or not as one pleases "even though one knows that x is the sort of act that falls under the principle, provided that one is ready to perform acts of that sort on some other occasions". (Hill 1971, p. 61)

Indeed, when there is not a person in distress, it does seem that one can choose not to help anyone provided that one is willing to help others on other occasions. By contrast, it does not seem that one can ever choose not to fulfil a perfect duty provided that one is willing to fulfil the duty on other occasions. For example, one is not now permitted to lie to others, or to ridicule them, just because one is willing to not always do so in the future.

We can now turn to whether latitude in the execution of duties allows for facts about one's personal relation to others to be a factor in determining one's actions.<sup>18</sup> More specifically, to whether one can choose between alternative courses of action based on the following principle:

(P) One favors those who are "closer" to oneself over those who are "further away" from oneself.<sup>19</sup>

In the case of the duty of beneficence, which is the duty that will be focused on here, latitude seems to allow one to choose to help a friend over a stranger, a countryman over a foreigner, a sibling over a

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<sup>18</sup> We will return to the distinction based on (3\*) in the section on exceptions (section III, chapter 2).

<sup>19</sup> The terms "closer" and "further away" do not refer to the physical distance between oneself and others, but to the distance in terms of social ties.

distant relative, etc. This is because, in each of these cases, one acts beneficently whether one helps the first person or the second.<sup>20</sup>

But, from the fact that a duty does not fully determine action, it does not necessarily follow that one can choose between alternative courses of action by appealing to some other principle. Indeed, it might be argued that the duty must not merely be given *priority* over any other principle but that it must be given *exclusivity*, which is to say that the duty must be recognized as the only action-guiding principle that one can appeal to. For example, based on what he claims are Kantian grounds, Timmerman argues that a coin toss is the way to resolve cases in which actions are not fully determined by duties. He argues that this procedure is fair whereas appealing to a principle such as (P) allows for one's actions to be shaped by prejudice.<sup>21</sup>

Kant, however, does think that, in carrying out the duty of beneficence, one can appeal to the consideration that a given person is closer to oneself than another. At one point, he acknowledges that acting benevolently toward others – merely based on the consideration that they are one's fellow human beings – amounts to doing quite little for them. One is then only not indifferent with regard to them. Kant states the matter as follows: “Now the benevolence present in love for all human beings is indeed the greatest in its *extent* [scope], but the smallest in its *degree*; and when I say that I take an interest in this human being's well-being only out of my love for all human beings, the interest I take is as slight as an interest can be. I am only not indifferent with regard to him” (MS 6:451). Since Kant clearly thinks that fulfilling the duty of beneficence requires more than not being indifferent with regard to others, it follows that facts about others – in addition to the fact that they are one's fellow human beings – should be attended to in carrying out this duty.

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<sup>20</sup> Latitude also seems to allow one to give preferential treatment in *how* one helps. For example, one can help others by buying them a product manufactured in one's own country instead of buying them a product manufactured in a foreign country.

<sup>21</sup> See Timmerman (2004).

It might be objected that the facts about others that should be attended to need not, on their own, disclose anything about the *relation* one stands in toward others. For example, they might be facts about the “rank, age, sex, health, prosperity or poverty” of others, all of which are considerations Kant cites as possibly relevant to carrying out one’s duties (MS 6:469). Now it is debatable whether all facts pertaining to these considerations are actually non-relational.<sup>22</sup> But, assuming that they are non-relational, further textual evidence is needed in order to show that Kant thinks that, in carrying out the duty of beneficence, one can appeal to the fact that a given person is closer to oneself than another. Fortunately, Kant does go on to say that the degree to which one helps another person *can* be based on the degree to which one is concerned by this other person. He explains that “in wishing I can be *equally* benevolent to everyone, whereas in acting I can, without violating the universality of the maxim, vary the degree greatly in accordance with the different object of my love (one of whom concerns me more closely than another)” (MS 6:452). And indeed, how much one is concerned by another person can be accounted for by relational facts, such as whether the other person is one’s friend, one’s relative, or one’s countryman.

In addition to the above textual evidence, the following more argumentative point can also be made: the categorical imperative, at least in its first formulation, seems to support giving preference to one’s friends (and to others one is close to). Indeed, there is a strong reason for why one cannot rationally want a world in which people, when they can equally fulfil a duty in two different ways, proceed by way of a coin toss instead of giving preference to their friends. Importantly, self-interest is *not* the reason why one cannot rationally want such a world. Indeed, if it is permitted for people to give preference to their friends, then one will sometimes end up disadvantaged: there will be times when one does not receive help from another person because this person has chosen to help his friend instead.

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<sup>22</sup> In part, this seems to depend on how narrowly one defines what counts as a “relational” fact.

It might be objected that, if one has enough friends, then it overall works out in one's advantage to switch to a world in which people give preference to their friends from a world in which they do not. Indeed, the times when one might have received help and now no longer does would be *fewer* than the times when one might not have received help and now does. To defuse this objection, the following restriction can be imposed: one *cannot* take into account how many friends one has. With this restriction imposed, there remains a strong reason for why one cannot want a world in which the consideration of friendship is not given any weight.<sup>23</sup> The reason is that (1) a world in which the institution of friendship is recognized and valued is a richer world relative to a world in which it is not, and (2) one wants to live in a world that is richer.

It might now be objected that Kant's moral philosophy, and specifically the test of whether a maxim can be willed as a universal law, does nothing to explain *why* a world in which the institution of friendship is recognized and valued is a richer world relative to a world in which it is not. In other words, it might be objected that Kant does not have the resources to explain *why* the institution of friendship matters. However, it is not so obviously true that Kant cannot explain the importance of friendship. Kant believes that it is in friendship that "the most intimate union of love with respect" is attained, and he spends a considerable amount of time discussing the importance of friendship (MS 6:469; see also MS 6:470-473). Therefore, the burden of proof rests with the objector. If it is to hold, his objection that Kant cannot explain the importance of friendship must in some way be reconciled with the fact that Kant does prize the institution of friendship (and so presumably has an explanation for why he does). But, even if it can be shown that Kant cannot *explain* why friendship is important, this remains a far cry away from showing that Kant requires that one *treat* friendship as unimportant. At the least, Kant's

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<sup>23</sup> This restriction is similar to the restrictions imposed by John Rawls on what one can appeal to, when behind the "veil of ignorance." See Rawls (1971).

framework seems to allow for friendship to be treated as important even if it does not vindicate it as such. Kant neither does, nor needs, to ask one to ignore facts about one's relation to others.

*Conclusion:*

The conclusion of this section is that a distinction between perfect and imperfect duties can be drawn with respect to latitude as long as the criterion in (3\*) is the basis for drawing this distinction, and that one's relation to others can be a factor in determining one's actions.

#### IV. Admit of Exceptions

In the *Groundwork*, Kant introduces another way in which he draws the distinction between perfect and imperfect duties when he makes the following assertion: "I understand here by a perfect duty one that admits no exception in favor of inclination" (G 4:422). It has been pointed out that "Kant does not say that imperfect duties may sometimes be set aside in the interest of inclination. Rather, he *denies* that *perfect* duties allow of any such exceptions" (Timmerman 2005 p. 16). Nevertheless, Kant clearly implies that imperfect duties admit of such exceptions given that, in this passage, Kant is explaining the difference between perfect and imperfect duties, as can be ascertained from context. In any case, in his *Lectures on Ethics*, Kant is more explicit about the fact that imperfect duties admit of exceptions; he there says that imperfect duties "may also be called neglectable, or better optional duties" (VE.V 27:578).

Calling imperfect duties "neglectable" or "optional" is, however, not a very careful way in which to convey the thought that they admit of exceptions. The duties themselves are not optional. It is performing actions that are in conformity with the duties that can be optional. Conceptually, there is a difference between sometimes flouting the command "Always help others" and always respecting the command "Sometimes help others." But the point is not merely a conceptual one. Kant makes it repeatedly clear that an inclination can never override a duty. Therefore, it is important to be clear that it is the imperfect duties that make it possible to sometimes satisfy an inclination instead of performing

an action that is in conformity with the duties. It is the imperfect duties that “leave it to the agent” how far to pursue certain actions (VE.V 27:578). In other words, when one sometimes satisfies an inclination instead of performing an action in conformity with an imperfect duty, what goes on is not necessarily “a resistance of inclination to the percept of reason (*antagonismus*), through which the universality of the principle (*universalitas*) is changed into mere generality (*generalitas*)” (G 4:424).

Now it might seem possible to reconcile Kant’s distinction based on latitude, and specifically the distinction based on whether the claim in (3\*) is true of a given duty, with Kant’s distinction based on whether a duty admits of exceptions. Kant himself clearly thinks that there is a close connection between the two distinctions, as revealed by the following remark: “we can grant *latitude* to a law, when it has exceptions” (VE.M 29:618). However, it seems that the two distinctions cannot be reconciled given what Kant says about exceptions in the *Metaphysics of Morals*: “a wide duty is not to be taken as permission to make exceptions to the maxim of actions but only as permission to limit one maxim of duty by another (e.g., love of one’s neighbor in general by love of one’s parents), by which in fact the field for the practice of virtue is widened” (MS 6:390). Kant’s view here seems to be that one can make an exception to performing an action that is in conformity with an imperfect duty *only if* it is in order to perform another action that is also in conformity with a duty. Therefore, making an exception to performing an action that is in conformity with an imperfect duty in order to satisfy an inclination is never permitted. The fact that one is willing to perform actions in conformity with an imperfect duty on other occasions is not an acceptable reason for not performing such an action on this occasion.

Admittedly, Kant’s view in the *Groundwork* – that an imperfect duty can admit of exceptions *in favor of inclination* – is more congenial to reconciling between the distinction based on latitude and the one based on exceptions. But, Kant’s considered view on exceptions is the one found in the *Metaphysics of Morals*. This is not only because the *Metaphysics of Morals* is a later work. It is also

because in the *Groundwork*, immediately before stating the division of duties based on whether they admit of exceptions, Kant provides the following disclaimer: “It must be noted here that I reserve the division of duties entirely for a future *Metaphysics of Morals*, so that the division here stands only as one adopted at my discretion (for the sake of arranging my examples)” (G 4:422).

*Conclusion:*

The conclusion of this section is that Kant’s distinction based on exceptions cannot be reconciled with his distinction based on latitude.

V. External Coercion and Motives

Another way in which Kant draws the distinction between perfect and imperfect duties is based on whether the duties can be enforced through external coercion. Perfect duties are equated with juridical duties (duties of right), which are the duties that *can* be externally enforced. By contrast, imperfect duties are equated with ethical duties (duties of virtue), which are the duties that *cannot* be externally enforced. Indeed, in his *Lectures on Ethics*, Kant asserts the following: “Our obligations are of two kinds: (1) those to whose observance we may justly be compelled; (2) those to which we should not be compelled externally. The first are legal duties (liabilities), the others, duties of virtue. The former are also called, in a strict sense, perfect; the latter, imperfect duties” (VE.M 29:617). Kant also goes on to say that “compulsory duties and perfect duties are taken to be identical” (VE.M 29:618). Moreover, elsewhere in his *Lectures on Ethics*, Kant declares that “all *officia stricta* – or *perfecta* – are called duties of right, and all *officia lata* – or *imperfecta* – duties of virtue” (VE.V 27:581). However, the distinction between perfect and imperfect duties based on whether the duties can be externally enforced faces serious problems.

To begin with, Kant does not always abide by this way of distinguishing between perfect and imperfect duties. In the *Metaphysics of Morals*, Kant maintains the division of duties into duties of right and duties of virtue: “the system of the doctrine of duties in general is ... divided into the system of the

*doctrine of right (ius)*, which deals with duties that can be given by external laws, and the system of the *doctrine of virtue (Ethica)*, which treats of duties that cannot be so given” (MS 6:379; see also MS 6:229, MS 6:380, and MS 6:394). But, Kant does *not* equate perfect duties with duties of right and imperfect duties with duties of virtue. Indeed, in the *Metaphysics of Morals*, Kant categorizes many perfect duties as ethical, as reflected in the diagram in chapter 1.

Mary Gregor has suggested that, in the *Metaphysics of Morals*, Kant does not break with the above way of drawing the distinction between perfect and imperfect duties as much as make an “amendment” to it. Essentially, her point is that Kant now makes an exception in the case of perfect duties to oneself because he recognizes that it is a feature of all duties to oneself that they cannot be externally enforced.<sup>24</sup> The following passage might help strengthen her claim: “Duties of right, both to oneself and to others, are *officia juris*, the former *interna* and the latter *externa*. The *externa* are of that type which he calls coercive duties, or genuine *officia juridica*, legal duties, and in regard to them the coercion from without is an authentic feature” (VE.V 27:582). Based on this passage, Kant does seem to go through the reasoning Gregor suggests. First, all duties of right are considered to be “*officia juris*,” and this includes duties to oneself and to others, but then an *exception* is made in the case of duties to oneself, which are qualified as not “genuine” or “authentic” legal duties. Moreover, since the passage is from the *Lectures on Ethics*, Kant does not even seem to make an “amendment” in the *Metaphysics of Morals*. He throughout seems to recognize that an exception must be made in the case of duties to oneself.

Nevertheless, Gregor’s suggestion faces the following two problems. First, Kant does not only make an exception in the case of perfect duties to oneself. He also exempts some perfect duties to *others* from external coercion. These are the perfect duties not to be arrogant, not to defame, and not

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<sup>24</sup> See chapters 8, 9 and 10 in Gregor (1963), where she also makes several other interesting comments about perfect duties to oneself.

to ridicule – all of which Kant classifies as ethical duties. Thus, it is not correct that Kant mostly abides by the above distinction. Second, it is far from clear *why* an exception must be made in the case of perfect duties to oneself. Both conceptually and practically, it is possible to back duties to oneself with sanctions. For example, the legal codes of some states stipulate punishing individuals who perpetrate acts of self-stupefaction or self-defilement – acts in violation of duties to oneself according to Kant – and these codes are enforced with some success. Admittedly, Kant’s point might be normative rather than conceptual or practical; his point might be that duties to oneself *should not* be externally enforced. Indeed, Kant is not interested in identifying which duties can be included in *any* legal system, but more specifically in identifying which duties can be included in an *ideal* legal system. However, Kant does not provide a convincing argument for why some duties should be externally enforced whereas others should not. This is a problem that infects Kant’s distinction based on external enforceability more generally, beyond the issue of how perfect duties to oneself are categorized. In the absence of such an argument, it is simply unhelpful to say that perfect duties are those duties that can be externally enforced whereas imperfect duties are those duties that cannot. In what follows, the arguments that Kant does provide for why some duties can be externally enforced whereas others cannot are critically discussed.

(a) *First argument*

A first argument can be gleaned from a remark Kant makes on at least two occasions in the *Metaphysics of Morals*. On one occasion, Kant says that “the doctrine of right wants to be sure that *what belongs* to each has been determined (with mathematical exactitude). Such exactitude cannot be expected in the doctrine of virtue, which cannot refuse some room for exceptions (*latitudinem*)” (MS 6:233). On another occasion, Kant says that, in the case of a duty of right, “*what is mine* and *what is yours* must be determined on the scales of justice exactly, in accordance with the principle that action and reaction are equal, and so with a precision analogous to that of mathematics; but this is not

necessary when it has to do with a mere duty of virtue” (MS 6:375). In these passages, Kant might be trying to make the following argument:

- (1) Law’s purpose is to order society with exactitude. For example, law “wants to be sure that *what belongs* to each has been determined (with mathematical exactitude).”
- (2) Given that this is law’s purpose, only duties that give guidance with “a precision analogous to that of mathematics” can be legal duties.
- (3) Imperfect duties do not give guidance with precision since they allow for latitude and exceptions. There is no clear-cut method for determining whether an individual is in compliance with an imperfect duty.
- (4) Therefore, imperfect duties cannot be legal duties.

If Kant is trying to make the above argument, then his conception of “law” strongly resembles the conception that has more recently been articulated by Lon Fuller. Fuller defines “law” by what he believes to be its purpose: “law is the enterprise of subjecting human conduct to the governance of rules” (Fuller 1964, p. 106). Based on this definition, Fuller reasons that, in order to count as items of “law,” rules must satisfy “rule of law” principles that test whether the rules are effective at guiding human conduct. For example, Fuller’s principles reject rules that are too vague or too obscure. Fuller speaks of an “internal morality of law” in order to express his thesis that there are normative “rule of law” principles that are built into the existence conditions of law. As Fuller explains, his thesis is “a procedural version of natural law ... [it is] concerned, not with the substantive aims of legal rules, but with the ways in which a system of rules for governing human conduct must be constructed and administered if it is to be efficacious and at the same time remain what it purports to be” (Fuller 1964, p. 96-7).<sup>25</sup>

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<sup>25</sup> Despite important differences with Fuller, Ronald Dworkin also conceives of law as a *purposive* enterprise. See Dworkin (1986).

However, one important objection to Fuller is that applying his principles in order to determine whether a rule can be externally enforced yields a positive result in the case of some immoral rules. Indeed, as long as the rules meet a standard of *efficiency* in guiding human conduct, they are not excluded by applying Fuller's principles. H.L.A. Hart has famously argued that – in describing the “rule of law” principles as constituting an “internal morality of law” – Fuller “perpetrates a confusion between two notions that it is vital to hold apart: the notions of purposive activity and morality” (Hart 1965, p. 1286). The following is the gist of Hart's argument: “Poisoning is no doubt a purposive activity, and reflections on its purpose may show that it has its internal principles. (‘Avoid poisons however lethal if they cause the victim to vomit’...) But to call these principles of the poisoner's art ‘the morality of poisoning’ would simply blur the distinction between the notion of efficiency for a purpose and those final judgments about activities and purposes with which morality in its various forms is concerned” (Hart 1965, p. 1286).

Given the above objection, the following might seem true: Kant can only (1) explain why he excludes imperfect duties from external coercion, at the cost of (2) not being able to explain why he excludes immoral rules that have the same form as perfect duties. This is not true, however. Whether rules are efficient at guiding human conduct is not the *sole* criterion at Kant's disposal. When he appeals to this criterion, Kant is only considering which *duties* can be externally enforced. Kant has already ruled out all immoral rules by appealing to a first criterion, the moral law.<sup>26</sup> In excluding rules, Kant can appeal to a criterion pertaining to form as well as to a criterion pertaining to content. The problem is not that Kant appeals to a criterion pertaining to form, but that the specific criterion pertaining to form that Kant appeals to – whether duties allow for latitude and exceptions – is unconvincing. As explained in what follows, the fact that duties allow for latitude and exceptions does

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<sup>26</sup> Kant has also ruled out all morally neutral rules by appealing to the moral law.

*not* entail that the duties are inefficient at guiding human conduct or that they cannot be translated into laws that specify with precision what ought to be done.

In the case of allowing for latitude, it is helpful to again consider the formulation that was given in (3\*). (3\*) identifies the latitude that imperfect duties allow for that is over and above the latitude that both perfect and imperfect duties allow for.<sup>27</sup> According to (3\*), on a given occasion one is permitted not to perform an action in conformity with an imperfect duty as long as one is willing to perform such actions on other occasions. The only exception is if the given occasion is an extreme one, such as if there is a person in distress. Therefore, according to (3\*), a minimum number of actions in conformity with an imperfect duty must be performed over a period of time. Although an imperfect duty does not require performing an action at any single point in time, it does require performing several actions over a period of time. Clearly, an imperfect duty guides human conduct. Moreover, in order to determine whether an individual is in compliance with the law, it is often the case that the individual's actions over a period of time must be considered rather than his actions at any single point in time. For example, in order to determine whether an individual is in compliance with a law against negligent behavior, the individual's actions, or lack thereof, over a period of time must be considered. Therefore, there is nothing aberrant about a law against non-beneficence that would similarly require considering an individual's actions over a period of time, in order to determine whether the individual is in compliance with the law. Admittedly, in applying a law against non-beneficence, the length of the relevant time period and the precise number of required beneficent acts might seem arbitrary. But, in applying a law against negligent behavior, the length of the relevant time period and the precise number of acts (or omission of acts) that is required before one can speak of "negligence" might also

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<sup>27</sup> Since Kant does not exclude perfect duties from external coercion, he is clearly not bothered by the latitude that both perfect and imperfect duties allow for. Kant does not even recognize that perfect duties allow for latitude.

seem arbitrary. Making a duty that allows for latitude into a law does not pose any particular problems of its own.

In the case of admitting of exceptions, it is important to recall what Kant exactly means when he says that imperfect duties admit of exceptions. One can make an exception to performing an action that is in conformity with an imperfect duty *only if* it is in order to perform another action that is also in conformity with a duty. Given that this is what Kant means, there is nothing particularly problematic about making a duty that allows for exceptions into a law. Laws often specify that one ought to perform an action unless one performs another action, or that one requirement applies to a situation unless another requirement applies. It would be a stretch to claim that such basic complexity in the law prohibits the law from accomplishing its function of ordering and guiding society.

(b) *Second argument*

A second argument Kant makes for why only some duties can be externally enforced is stated on at least two occasions in the *Metaphysics of Morals*. On one occasion, Kant says that “[d]uties of virtue cannot be subject to external lawgiving simply because they have to do with an end which (or the having of which) is also a duty” (MS 6:239). On another occasion, Kant says that it is self-contradictory to coerce someone to adopt an end: “That ethics contains duties that one cannot be constrained by others (through natural means) to fulfil follows merely from its being a doctrine of *ends*, since *coercion* to ends (to have them) is self-contradictory” (MS 6:381).

Contrary to what Kant claims, the following three examples (and many other similar examples) show that it is in fact possible to coerce someone to adopt an end. (1) Parents coerce their children to adopt the end of improving their grades, by threatening their children to deprive them of their favorite sweets, or of their favorite games, if they do not. (2) Lawmakers coerce factory owners to adopt the end of decreasing pollution emissions, by levying a tax on factories that is dependent in magnitude on how much pollution the factories emit. (3) European Union officials coerce policymakers in member

states to adopt the end of decreasing inflation, by setting a low inflation rate as a requirement for the continued membership of states. In these examples, nothing is stipulated about how the persons ought to go about achieving the end that has been set for them – coercion is clearly applied at the level of ends and not at the level of actions.<sup>28</sup>

Gregor attempts to defend Kant's claim that coercion cannot be applied at the level of ends by providing the following example: "The State can compel me to refrain from stealing; it cannot compel me to make the security of property the end on account of which I refrain from stealing" (Gregor 1963, p. 65). What Gregor says does not seem true, however. The state *can* compel one to make the security of property the end on account of which one refrains from stealing. For example, the state can issue the following law: for every object that is stolen, an object of greater value will be confiscated from each person's possessions. If this law is instituted, one will be keen on making sure that property is secure. The end of the security of property will be the end on account of which one does not steal, as well as the end on account of which one remains vigilant to make sure that no one else steals. Although this law is indeed draconian, it is not inconceivable. The point in mentioning it is simply to show that it is *possible* to coerce someone to adopt the end that Gregor cites. Whether it is *likely* that someone will ever be coerced to adopt the end that Gregor cites is of course a separate matter.

It might be objected that – even if the above law is instituted – the security of property is still not the end on account of which one does not steal. Indeed, it might be objected that one's real end is one's own happiness, and that one only cares about the security of property because one's own happiness has been made to depend on it. In fact, this objection can be made in the case of all of the above examples. For instance, it might be objected that the child's real end is his own happiness, and that the child only cares about improving his grades because his own happiness has been made to

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<sup>28</sup> In the above examples, a threat is issued in order to coerce someone to adopt an end. Carrying out a direct action can also coerce someone to adopt an end. For example, setting objects in a room on fire coerces someone, who is in the room, to adopt the end of exiting the room.

depend on it. More generally, the point seems to be that although one can be coerced to adopt an *intermediary* end, one cannot be coerced to adopt one's *ultimate* end. Now this might be true. However, externally enforcing a duty that prescribes an end does *not* require making the end prescribed by the duty the ultimate end of someone. Making it an intermediary end that someone works towards is enough.

In any case, coercing someone to *conform* to a duty that prescribes an end does not seem to even require making that person adopt, as an intermediary end, the end prescribed by the duty. This is because a duty that prescribes an end can be translated into duties that regulate actions, and surely these latter duties can then be externally enforced. For example, the duty that prescribes the happiness of others as an end can be translated into the duties to *give* money to charity, to *volunteer* in community organizing projects, to *attend* to the needs of friends, etc. All of these duties regulate actions without making any reference to the end on account of which the actions are carried out. As Schaller points out, “[o]ne can easily imagine laws providing for the punishment of persons who, say, refuse to donate a kidney to save another’s life, who neglect to contribute a certain percentage of their income to charitable organizations, or who refuse to provide even minimal assistance to people caught in specific kinds of life-threatening situations” (Schaller 1987, p. 304). Laws of this sort have in fact been passed in some U.S. states and in many European countries, as Schaller goes on to mention. Even Kant, while maintaining that one cannot be coerced to adopt an end, admits on at least two occasions that one can be coerced to perform actions that are directed at an end. He says that “[n]o external lawgiving can bring about someone’s setting an end for himself ... although it may prescribe external actions that lead to an end without the subject making it his end” (MS 6:239). Kant also says that “I can indeed be constrained by others to perform *actions* that are directed as means to an end, but I can never be constrained by others *to have an end*: only I myself can *make* something my end” (MS 6:381).

Now by one's end what Kant might have in mind is one's reason for performing an action. In raising the issue of ends, his point might really be that it is not possible to coerce someone to act on a moral motive (i.e. to act out of a sense of duty). Although this is a plausible interpretation of what Kant means to say, it does not help support Kant's conclusion that only some duties can be externally enforced. First, while only some duties prescribe ends, it is true of all duties that carrying out the duty must be done out of a sense of duty. Second, applying coercion sometimes does have the effect that one acts on a moral motive. These two points are developed in rejecting the third argument.

(c) *Third argument*

Kant says that "[t]hat lawgiving which makes an action a duty and also makes this duty the incentive is *ethical*. But that lawgiving which does not include the incentive of duty in the law and so admits an incentive other than the idea of duty itself is *juridical*" (MS 6:219). Kant also says that "if the action is in conformity with the law, there is no more to be said about the disposition of the subject, or the subjective motivating ground to action in the idea of the law that has been, or is to be, fulfilled" (VE.V 27:582). Kant might be interpreted as drawing the following distinction: in the case of some duties, performing an action in conformity with duty must be done out of a sense of duty whereas, in the case of other duties, this need not be the motive. If Kant is so interpreted, then the following might be his argument for why only some duties can be externally enforced:

- (1) In the case of some but not all duties, performing an action in conformity with duty must be done out of a sense of duty.
- (2) It is not possible to provide an external incentive for an action that is performed out of a sense of duty.
- (3) Therefore, not all duties can be externally enforced.

However, the above argument is deeply flawed. Both of its premises are false.

The first premise is false since it is true of *all* duties that the motive for performing an action in conformity with duty must be respect for duty. In the above quoted passages, Kant's point is that *the law* is indifferent with respect to an individual's motive for performing an action that is mandated by the law. For example, from the perspective of the law, it makes no difference whether an individual pays his taxes out of fear of punishment or out of a sense of duty. However, it does not follow from this point that – in the case of a duty that is also a law – the motive for performing an action in conformity with the duty does not matter. The motive only does not matter *from the perspective of the law*; the motive still matters *from the perspective of morality*. Kant is especially keen on making this clear in his *Lectures on Ethics*. He there explains that “it is right to pay, but if we take it as a maxim that payment is also to be made, even where no coercion is present, that we keep our word voluntarily, then this subjective principle in the action is ethical, and legality is then combined therein with morality” (VE.V 27:584). Kant even explicitly states that “[e]thics has to do with the actions that are done from duty, and is thus applicable to all duties; whereas law is concerned with external actions” (VE.M 29:620). Thus, the following is the distinction Kant actually draws between duties in terms of motives: some duties can be considered from the perspective of the law – which is indifferent to motives – whereas other duties cannot be considered from this perspective.

It would be tautological to argue from the above distinction to the conclusion that only some duties can be part of the law; that only some duties can be part of the law is exactly what the above distinction asserts. Admittedly, it would not be tautological to argue from the following alternative distinction: some duties can be considered from a perspective indifferent to motives whereas other duties cannot. The argument would then go as follows. (1) Some duties cannot be considered from a perspective indifferent to motives. (2) Because the law is indifferent to motives, duties that cannot be considered from a perspective indifferent to motives cannot be part of the law. (3) Therefore, not all duties can be part of the law. However, this alternative distinction is false. Just as it is true of all duties

that the motive for performing an action in conformity with duty must be respect for duty, as has been emphasized, it is also true of all duties that an action in conformity with duty can be performed for a motive other than respect for duty.

As for the second premise, it is false since the existence of incentives to perform an action does not preclude the action from being performed out of a sense of duty. Barbara Herman has helpfully argued that although the action cannot be “motivated by inclination,” the action can still be “accompanied by inclination.”<sup>29</sup> In other words, one can be motivated to perform the action for some other reason as long as one’s decision to perform the action is not ultimately based on this reason. The reason can be existent as long as non-operative. Given Herman’s explanation, there does not seem to be anything objectionable about instituting a law that serves as an incentive for performing the action. At worst, the law is useless.

Moreover, the law is not useless if one is willing to go further than Herman does and grant inclinations some role. One might want to go further than Herman does because of the following consideration: the fact that performing an action must be motivated by respect for duty does not entail that inclinations cannot *contribute* to motivating the performance of the action. As Allison puts the point, “granting that actions from inclination *alone* are lacking in [moral] worth and that the duty motive must somehow be operative, it seems to be quite a jump from this to the claim that actions must be from duty *alone* in order to possess moral worth” (Allison 1990, p. 111). Therefore, the law might be able to help one to act on a moral motive. For example, suppose that one is motivated not to steal out of a sense of duty, but that one is even more strongly motivated to steal because of inclinations. As things stand, one will not act on one’s motive not to steal. But, suppose that a law is instituted that gives one a further motive not to steal, albeit a motive based on inclinations. Suppose also that this motive together – but only together – with the motive not to steal out of respect for duty

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<sup>29</sup> See Herman (1981).

outweighs the motive to steal. As a result of the law, one will not steal. Also as a result of the law, one will act on a moral motive, as well as on an inclination, whereas one otherwise would only have acted on an inclination.

Admittedly, not all examples are as congenial to showing that instituting a law, which serves as an incentive for performing an action in conformity with duty, has the effect that one acts on a moral motive. In the above example, it was stipulated that the inclination resulting from the law was insufficient to outweigh the opposing inclination; the moral motive was still needed. Had the inclination resulting from the law been sufficient to outweigh the opposing inclination, it is unclear whether one would still be acting on the moral motive. But, it is surely *sometimes* the case that the inclination resulting from the law is independently insufficient while jointly sufficient when combined with the motive of duty. Therefore, instituting the law is surely *sometimes* helpful in getting one to act on a moral motive.

*Conclusion:*

The conclusion of this section is that Kant's distinction between perfect and imperfect duties based on external enforceability is inadequate. Not only does Kant not always abide by this way of drawing the distinction, but the above three textually-based arguments for why some duties can be externally enforced whereas others cannot are also unconvincing.

#### VI. Moral Rights and Rights to Coerce

Kant often cashes out the previous distinction between perfect and imperfect duties based on external enforceability in terms of correlative rights. Problems with Kant's distinction based on external enforceability are therefore also problems for his distinction based on correlative rights. In addition, Kant's distinction based on correlative rights suffers from the following problem of its own. At times, Kant draws the distinction as follows: perfect duties are correlated with rights whereas imperfect duties are not. But, at other times, Kant draws the distinction as follows: both perfect and imperfect

duties are correlated with rights, but only perfect duties are correlated with rights to compel performance (i.e. rights to coerce). This inconsistency in how the distinction based on correlative rights is drawn results from a deeper inconsistency in how a “right” is conceived of. In particular, Kant wavers between the following two conceptions of a “right”: (1) a right is an authorization to use coercion in certain circumstances, and (2) a right can be a mere moral claim. In what follows, textual evidence is presented in order to corroborate the above account of Kant’s inconsistency.

At one point in the *Metaphysics of Morals*, Kant explicitly asserts that “right is connected with an authorization to use coercion” (MS 6:231). He goes on to say that “right need not be conceived as made up of two elements, namely [1] an obligation in accordance with a law and [2] an authorization of him who by his choice puts another under obligation to coerce him to fulfil it. Instead, one can locate the concept of right directly in the possibility of connecting universal reciprocal coercion with the freedom of everyone” (MS 6:232). Kant also says that “when it is said that a creditor has a right to require his debtor to pay his debt, this does not mean that he can remind the debtor that his reason itself puts him under obligation to perform this; it means, instead, that coercion which constrains everyone to pay his debts can coexist with the freedom of everyone, including that of debtors, in accordance with universal external law. Right and authorization to use coercion therefore mean one and the same thing” (MS 6:232). In light of these passages, it seems clear that, as J.B. Schneewind puts it, “Kant thinks he is asserting an analytic proposition when he says that acts to which someone has a right may properly be obtained by compulsion” (Schneewind 1990, p. 59).<sup>30</sup>

However, in his *Lectures on Ethics*, Kant distinguishes between two types of right: a moral right, on the one hand, and a right to coerce, on the other. He argues that the existence of the first right is a necessary (but not sufficient) condition for the existence of the second. He also explains that both perfect and imperfect duties are correlated with moral rights, but that the crucial difference is that

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<sup>30</sup> See also Schneewind (1993).

only perfect duties are also correlated with rights to coerce. For example, in one especially relevant passage, Kant asserts the following:

Since a coercion is unthinkable without a right, and indeed this right must come first, before I can have a right to coerce, so the relevant division, founded on the right of others, *inter obligationes perfectas et imperfectas* [between perfect and imperfect obligations] is to that extent false, when used to distinguish whether the other has a right of coercion in my regard or not; for by that test, no right at all would exist in the latter case, though this should not be assumed, for it is only a right of coercion that is held not to exist. (VE.M 27:528)

David Heyd has claimed that according to Kant moral rights but not rights to coerce are correlated with imperfect duties.<sup>31</sup> But, unlike the above passage, the passage that Heyd points to does not support his claim. The following is the passage that Heyd points to: “To every duty there corresponds a right in the sense of an *authorization* to do something (*facultas moralis generatim*); but it is not the case that to every duty there correspond *rights* of another to coerce someone (*facultas iuridica*). Instead, such duties are called, specifically, *duties of right*” (MS 6:383). In this passage, Kant’s point is not that for every duty there is a *correlative* right but that this right need not be a right to coerce. Rather, Kant’s point is that for every duty there is a *corresponding* right to carry out the duty but that there need not be a correlative right. His point, in other words, is that although the law (the ideal legal system) does not *require* that all duties be carried out, it does *permit* for all duties to be carried out.

*Conclusion:*

The conclusion of this section is that Kant’s distinction between perfect and imperfect duties based on correlative rights suffers from an inconsistency in Kant’s conception of what a “right” consists of, in addition to suffering from the problems that Kant’s distinction based on external enforceability suffers from.

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<sup>31</sup> See Heyd (1980).

## VII. Supererogatory and Mandatory Actions

At one point in the *Metaphysics of Morals*, Kant asserts the following: “Imperfect duties alone are ... duties of virtue. Fulfillment of them is *merit (meritum)* = +a; but failure to fulfill them is not in itself *culpability (demeritum)* = -a) but rather mere *deficiency in moral worth* = 0, unless the subject should make it his principle not to comply with such duties” (MS 6:390). The following is the distinction Kant seems to draw between duties. It is right to perform actions in conformity with perfect duties and wrong not to perform such actions. By contrast, it is right to perform actions in conformity with imperfect duties but not wrong not to perform such actions; what is wrong is to make it one’s principle (i.e. one’s policy) not to perform actions in conformity with imperfect duties. In other words, the following is the distinction Kant seems to draw: actions in conformity with perfect duties are mandatory whereas actions in conformity with imperfect duties are supererogatory. Whether this way of drawing the distinction can be defended is examined in what follows. Passages in which Kant appears to reject the possibility of supererogatory action are first examined. Then examined are four different arguments for why – given the nature of imperfect duties – actions in conformity with imperfect duties might be thought of as supererogatory.

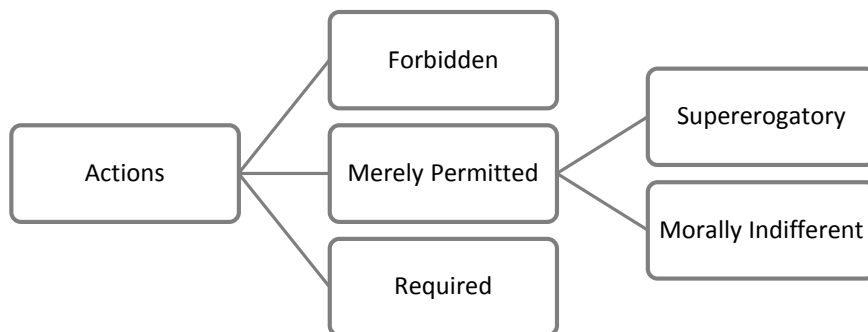
### (a) *The Passages*

In several passages from the *Critique of Practical Reason*, Kant might seem to reject the possibility of supererogatory action. However, on closer examination of the passages, it becomes clear that Kant does not. In some of the passages, Kant’s point is only that educators should spare their pupils *examples* of supererogatory actions because it is a counterproductive method for instilling in them an interest in morality. The following is one such passage: “It is altogether contrapurposeful to set before children, as a mode, actions as noble, magnanimous, meritorious, thinking that one can captivate them by inspiring enthusiasm for such actions. For, since they are still so backward in observance of the commonest duty and even in correct estimation of it, this is tantamount to soon

making them fantasizers” (KpV 5:157; see also KpV 5:155). In other passages, Kant’s point is only that an agent should not *think* of his action as meritorious because this might alter his motive for performing the action. The following is one such passage: “By exhortation to actions as noble, sublime, and magnanimous, minds are attuned to nothing but moral enthusiasm and exaggerated self-conceit; by such exhortations they are led into the delusion that it is not duty ... which constitutes the determining ground of their actions, and which always humbles them inasmuch as they observe the law (*obey* it), but that it is as if those actions are expected from them, not from duty but as bare merit” (KpV 5:84-5; see also KpV 5:156 and KpV 5:159). In fact, at one point in the *Critique of Practical Reason*, Kant seems to acknowledge that actions can be supererogatory. He says that the “[a]ctions of others that are done with great sacrifice and for the sake of duty alone may indeed be praised by calling them *noble and sublime* deeds, but only insofar as there are traces suggesting that they were done wholly from respect for duty and not from ebullitions of feeling” (KpV 5:85).

In some passages from the *Metaphysics of Morals*, Kant might also seem to reject the possibility of supererogatory action. However, with only one exception, closer examination of the passages also reveals that Kant does not. As evidence that Kant rejects the possibility of supererogation, Heyd mentions that “Kant even questions the very existence of a category of morally indifferent actions” (Heyd 1980, p. 309). The following is the passage Heyd refers to: “The question can be raised whether there are such [morally indifferent] actions and, if there are, whether there must be permissive laws (*lex permissiva*), in addition to laws that command and prohibit ... in order to account for someone’s being free to do or not to do something as he pleases” (MS 6:223). Another frequently cited passage is the one in which Kant is critical of the conduct of a “fantastically virtuous” person “who allows *nothing to be morally indifferent (adiaphora)* and strews all his steps with duties, as with mantraps” (MS 6:409). However, nothing that Kant says in either of these passages commits him to rejecting the possibility of supererogatory action. In the first passage, Kant questions whether there

are morally indifferent actions while, in the second passage, Kant insists that there are morally indifferent actions. Either way, it makes no difference with respect to whether there are supererogatory actions. This is because supererogatory actions are actions that are merely permitted (i.e. permitted but not required) while *not* morally indifferent, as reflected in the diagram below. If no action is morally indifferent this only implies that all actions that are merely permitted are supererogatory. Similarly, if some actions are morally indifferent this only implies that not all actions that are merely permitted are supererogatory.



At one point in the *Metaphysics of Morals*, Kant asserts that all merely permitted actions are morally indifferent: “An action that is neither commanded nor prohibited is merely *permitted* ... [s]uch an action is called morally indifferent (*indifferens, adiaphoron, res merae facultatis*)” (MS 6:223). Given that Kant makes this assertion, it cannot be entirely denied that there is some evidence that Kant rejects the possibility of supererogatory action. However, the evidence is weak. It only consists of this one assertion on this one occasion. Since the evidence that Kant rejects the possibility of supererogatory action is weak, Kant’s distinction between perfect and imperfect duties based on supererogation cannot be rejected straightaway. Arguments in defence of the claim that actions in conformity with imperfect duties can be thought of as supererogatory must be considered.

(b) *First Argument*

Michael Stocker presents an argument for why actions in conformity with an imperfect duty are supererogatory. His argument can be stated as follows. (1) It is possible to fulfil an imperfect duty

in more than one way. (2) Since it is possible to fulfil an imperfect duty in more than one way, it is right to perform an action in conformity with an imperfect duty while not wrong not to perform such an action. (3) Therefore, an action in conformity with an imperfect duty is supererogatory.<sup>32</sup> However, this argument seems thoroughly inadequate. First, as discussed in the section on latitude, both perfect and imperfect duties can be fulfilled in more than one way. Stocker's argument therefore proves too much: it proves that actions in conformity with a perfect duty are also supererogatory. Second, Stocker misinterprets what it means for an action to be supererogatory. Admittedly, the thought that an action is supererogatory is often expressed in the following terms: it is right to perform the action while not wrong not to perform the action. But surely it is also assumed that the following is the *reason* why it is right to perform the action while not wrong not to perform the action: performing the action goes above and beyond what is required. Stocker's reason for why it is right to perform the action while not wrong not to perform it is that an equivalent action could be performed instead – a fact that does not seem to be of considerable moral significance. Another way to put the objection is that Stocker's argument might meet the letter of the idea of supererogation (since all such actions will be good but not required) but not its spirit, since the actions are not “beyond” what is required.

(c) *Second Argument*

Another argument might appeal specifically to the latitude that imperfect duties allow for that is over and above the latitude that both perfect and imperfect duties allow for. Such an argument can be stated as follows. (1) An imperfect duty requires that a number of actions of a given type be performed over a period of time. (2) It follows that, once the required number of actions of a given type has been performed, performing additional actions of this type is right but not performing additional actions of this type is not wrong. (3) Therefore, once the required number of actions of a given type has been performed, performing additional actions of this type is supererogatory. This

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<sup>32</sup> See Stocker (1967).

argument requires amending Kant's distinction between perfect and imperfect duties based on supererogation, but doing so does not seem particularly problematic. Imperfect duties are not distinguished from perfect duties based on the fact that performing actions in conformity with the former is supererogatory. Instead, imperfect duties are distinguished from perfect duties based on the fact that performing actions of a given type, beyond the number that is required by the former, is supererogatory.

However, the above account of supererogatory action is vulnerable to the following objection, which Marcia Baron formulates: "it invites the notion that a large part of morality is beyond moral scrutiny"; it treats some acts "as constituting an independent category, independent in the sense that their value cannot be explained in terms of duty" (Baron 1987, p. 261 and 240). The above account might at first seem immune from this objection because the account does not seem to divorce the category of supererogatory action, on the one hand, from considerations pertaining to duty, on the other. Indeed, supererogatory actions are defined as actions that would have contributed to fulfilling imperfect *duties* had enough such actions not already been performed. The exact way in which the account invokes duties is significant, however. As explained in what follows, the exact way in which the account invokes duties does not allow for explaining the value of supererogatory actions in terms of the duties.

If an action contributes to fulfilling a duty, then it follows that performing the action is right. But, if an action would have contributed to fulfilling a duty had some facts not obtained, does it then still follow that performing the action is right? The answer seems to be that it does not follow. For example, assisting a person with a given task does not contribute to fulfilling the duty of beneficence if one knows that assisting the person will cause another person to kill him. Had this fact not obtained (i.e. had one not known that assisting the person will cause another person to kill him), then one's action would have contributed to fulfilling the duty of beneficence. Similarly, throwing a rope into a

lake does not contribute to fulfilling one's duty of beneficence if there is no one in the lake who is drowning. Had this fact not obtained (i.e. had there been someone in the lake who is drowning), then one's action would have contributed to fulfilling the duty of beneficence. It might be objected that, unlike the facts that obtain in these examples, the fact that one has already performed the number of beneficent acts required by the imperfect duty of beneficence does not make it any less right to perform an act of beneficence. But why might this be so? Why is performing beneficent acts still right after the number of beneficent acts required by the duty has been performed? It does not seem that one can explain why it is right by appealing to the duty of beneficence. Were it to follow from the duty that performing more beneficent acts is right, then the duty would prescribe performing more beneficent acts, which it does not. Moreover, it cannot at this point be claimed that the duty of beneficence is open-ended, that performing an act of beneficence is always in conformity with the duty no matter how many such acts have already been performed. If this is claimed then the whole second argument does not even get started. Indeed, if performing acts of beneficence even beyond a minimum number of such acts is still in conformity with the duty of beneficence then it seems that no act of beneficence can be supererogatory.

(d) *Third Argument*

Another argument for distinguishing between perfect and imperfect duties based on supererogation might appeal to Kant's distinction based on external enforceability. Essentially, the argument is that performing actions in conformity with imperfect duties is supererogatory because imperfect duties are not externally enforced. At one point in the *Metaphysics of Morals*, Kant might seem to make such an argument. Kant says that "[i]f someone does *more* in the way of duty than he can be constrained by law to do, what he does is *meritorious (meritum)*; if what he does is just exactly what the law *requires*, he does *what is owed (debitum)*; finally, if what he does is *less* than the law requires, it is morally *culpable (demeritum)*" (MS 6:226). However, such an argument does not work. It

misinterprets what it means for an action to be supererogatory. Supererogatory actions are right to perform and not wrong not to perform. If imperfect duties are not externally enforced then it follows that not performing actions in conformity with them is not *punishable*. It does not follow that not performing actions in conformity with them is not *wrong*. Actions that are punishable are a subset of actions that are wrong.

(e) *Fourth Argument*

Kant might be trying to make yet a different argument for why actions in conformity with imperfect duties are supererogatory in the following passage: “The chief division can be that into duties to others by performing which you also put others under obligation and duties to others the observance of which does not result in obligation on the part of others. – Performing the first is *meritorious* (in relation to others); but performing the second is fulfilling a duty *that is owed*. – *Love* and *respect* are the feelings that accompany the carrying out of these duties” (MS 6:448). However, the argument Kant might be trying to make in this passage seems to suffer from at least one of the following four problems.

First, Kant says that performing actions in fulfillment of some duties is meritorious “in relation to others.” This suggests that the actions should be *viewed* as meritorious by those who benefit from them. It falls short of suggesting that the actions are in fact meritorious – that they are in fact right to perform but not wrong not to perform. Second, it is unclear why performing actions in fulfillment of some duties should be viewed as meritorious whereas performing actions in fulfillment of other duties should be viewed as owed, given that it is true of all duties, without exception, that performing actions in fulfillment of them is a moral *requirement*. Moreover, it is of no help to point out that in the case of some duties performing an action in conformity with the duty is *optional* on some occasions – this would only lead back to the second argument, which was rejected.

Third, in the quoted passage, Kant helps himself to yet a third account of the relation between duties and rights, different from the two accounts presented in section V. This leads to further inconsistency in his view. On the first account, only juridical duties are correlated with rights. On the second account, both juridical duties and all ethical duties are correlated with moral rights but only juridical duties are correlated with rights to coerce. On the third account, which Kant now adopts, some *but not all* ethical duties are correlated with rights. Indeed, Kant says that to perform some ethical duties is to do something “*that is owed*” whereas to perform other ethical duties is not to do something that is owed. Perfect ethical duties to others (duties of respect) are correlated with rights whereas imperfect ethical duties to others (duties of love) are not correlated with rights.

Fourth, in addition to the fact that the new account is inconsistent with the previous two, it is also implausible. The new account is implausible because of the following two facts, when jointly considered. (1) The account recognizes the existence of moral rights.<sup>33</sup> (2) The account denies that duties of love are correlated with rights. In light of (1) and (2), the account denies that duties of love are correlated with moral rights. This result seems implausible because it seems that one *does* have a moral claim to receive help from others. To be clear about where the problem with the third account lies, it is helpful to compare the third account with the first. The first account also denies that duties of love are correlated with moral rights. But this is because the first account denies the very existence of moral rights. By denying that duties of love are correlated with moral rights, the first account is not committed to denying that one has a moral claim to receive help from others. By contrast, by denying that duties of love are correlated with moral rights, the third account is committed to denying this claim.

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<sup>33</sup> The rights that are correlated with duties of respect cannot be rights to coerce since duties of respect are ethical. These rights must therefore be moral rights.

*Conclusion:*

The conclusion of this section is that Kant's distinction between perfect and imperfect duties based on supererogatory action is untenable. The distinction is untenable not because Kant rejects the possibility of supererogatory action; there is little textual evidence that Kant does. It is untenable because all four of the arguments, for why actions in conformity with imperfect duties might be thought of as supererogatory, are unconvincing.

#### VIII. Omission and Commission of Actions

Another way in which the distinction between perfect and imperfect duties is drawn is based on whether duties are positive or negative. Perfect duties are said to be negative; they are said to command the omission of actions. Imperfect duties are said to be positive; they are said to command the commission of actions. For example, at one point in the *Metaphysics of Morals*, when differentiating between perfect and imperfect duties to oneself, Kant asserts the following:

The only *objective* division of duties to oneself will, accordingly, be the division into what is formal and what is material in duties to oneself. The first of these are *limiting* (negative) duties; the second, *widening* (positive duties to oneself). Negative duties *forbid* a human being to act contrary to the end of his nature and so have to do merely with his moral *self-preservation*; positive duties, which *command* him to make a certain object of choice his end, concern his *perfecting* of himself. Both of them belong to virtue, either as duties of omission (*sustine et abstine*) or as duties of commission (*viribus concessis utere*), but both belong to it as duties of virtue. (MS 6:419)<sup>34</sup>

Moreover, at one point in his *Lectures on Ethics*, Kant emphasizes that juridical duties "are one and all prohibitive and negative" (VE.V 27:587). Since all juridical duties are perfect duties, Kant's statement gives further reason to believe that all perfect duties are negative. In addition, Kant's formulation of the Universal Principle of Right, from which juridical duties are supposed to be derived, seems to imply that juridical duties can only be negative. The principle is formulated as follows: "Any action is *right* if

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<sup>34</sup> This passage will also be relevant for the distinction examined in section VIII, the distinction based on the difference between the preservation of humanity, on the one hand, and the furtherance of humanity, on the other.

it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law" (MS 6:230). This principle seems to only generate negative duties because the principle only rules out actions that are incompatible with the freedom of others. It is the commission of actions that the principle categorizes as either wrong or permitted, whereas it is the omission of actions that the principle would need to categorize as either wrong or permitted in order to generate positive duties. To be clear, it is not the fact that the principle regulates the commission of actions *per se* that precludes the principle from generating positive duties. It is this fact combined with the fact that the principle only rules out actions, that the principle does not positively endorse any actions.

It is surely in light of passages such as the above that Timmerman says that perfect duties are negative duties: "Applying the commands of what is variously called 'strict', 'perfect' or 'unremitting' duty is comparatively straightforward. They are negative duties commanding specific acts, and they do not admit of any exceptions (or so it would seem)" (Timmermann 2005, p. 15).

However, it is not true that perfect duties correspond to negative duties whereas imperfect duties correspond to positive duties. Both in the case of ethical duties and in the case of juridical duties, there is no such correspondence. In the case of ethical duties, some perfect duties that might seem to be negative and some imperfect duties that might seem to be positive are, upon further consideration, not obviously so. This is hopefully made clear through the discussion of the following three ethical duties:

- (1) The perfect duty not to lie might at first seem to be a negative duty. But, in the case of a claim that one makes about one's future actions, the duty not to lie seems equivalent to the positive duty *to tell the truth* if one speaks (or sometimes to the positive duty *to keep one's promises*). It also seems that the duty not to lie can be equivalent to more specific positive duties. For example, if one says

to another that one will return a book then the duty not to lie seems equivalent to the positive duty *to return* the book.

- (2) The perfect duty to respect others might at first seem to be a negative duty. Kant certainly thinks that it is. He claims that “a duty of free respect toward others is, strictly speaking, only a negative one (of not exalting oneself above others) and is thus analogous to the duty of right not to encroach upon what belongs to anyone” (MS 6:450). Gregor attempts to defend Kant’s claim by pointing out that, in the *Metaphysics of Morals*, the duty to respect others under consideration is a duty to respect others *by virtue of the fact that they are rational beings*. She says that “a metaphysic of morals cannot descend into the relations of respect proper to men under contingent conditions (age, sex, position, moral character, etc.), where positive marks of respect might be called for” (Gregor 1963, p. 185). However, although the *source* of the duty of respect is not some contingent fact about individuals and their culture, as Gregor points out, *applying* the duty of respect does involve taking into account contingent facts about individuals and their culture. Now in some cultures, as in Kant’s own perhaps, respecting the rational nature of others might only require refraining from certain acts. But, in other cultures, respecting the rational nature of others might also require performing certain acts. For example, in some cultures, respecting the rational nature of others might require one to smile, to nod, or to bow whenever one encounters other persons, whoever these other persons might be. If one does not perform an act of this sort, one is believed to be disrespecting the rational nature of the other persons. In other words, to use Kant’s turn of phrase, one is believed to be “exalting oneself above others.” Finally, it is worth pointing out that applying duties other than the duty of respect also involves taking into account contingent facts about individuals and their culture; the duty of respect is not exceptional in this respect. The duty of beneficence is an obvious example. In deciding how to act in order to make another person

happy, one needs to take into account what makes this other person happy, and this is at least partly determined by contingent facts about this person and his culture.

- (3) The imperfect duty of beneficence might at first seem to be a positive duty. The duty of beneficence certainly requires performing beneficent acts. However, the duty of beneficence also requires refraining from certain acts. Kant even recognizes this fact. He says that “[t]he happiness of others also includes their *moral well-being (salubritas moralis)*, and we have a duty, but only a negative one, to promote this” (MS 6:394). He also goes on to say that “it is my duty to refrain from doing anything that, considering the nature of a human being, could tempt him to do something for which his conscience could afterwards pain him” (MS 6:394).

As for juridical duties, although they are all perfect they are not all negative. Juridical duties that are correlated with our innate right, our right to freedom, are indeed negative. These are the duties that seem to be generated by the Universal Principle of Right. The connection between our innate right and the Universal Principle of Right is made clear in passages such as the following: “*Freedom* (independence from being constrained by another’s choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every man by virtue of his humanity” (MS 6:237). However, juridical duties that are correlated with our acquired rights are not all negative. For example, when one signs a contract selling a thing to another, it becomes by law one’s duty *to give* this thing to the other. The other has acquired a right that is correlated with a positive duty. Kant is explicit about this point. He says that “what I acquire directly by a contract is not an external thing but rather his deed” (MS 6:274). He also says that “I have become *enriched (locupletior)* by acquiring an active obligation on the freedom and the means of the other” (MS 6:275).<sup>35</sup> In addition, in the sphere of public right, as distinct from the sphere of private right, there are also positive duties. The duty to pay one’s taxes to the state is an example of such a duty.

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<sup>35</sup> For a helpful discussion of Kant’s conception of acquired rights, see chapter three in Ripstein (2009).

*Conclusion:*

The conclusion of this section is that the distinction between perfect and imperfect duties cannot be explained in terms of whether duties are negative or positive. The claim that perfect duties are negative whereas imperfect duties are positive duties is false.

IX. Preservation and Furtherance of Humanity

Another distinction Kant draws between duties is based on the difference between the preservation of humanity, on the one hand, and the furtherance of humanity, on the other. Acting in conformity with perfect duties is said to be necessary for the preservation of humanity whereas acting in conformity with imperfect duties is said to be necessary for the furtherance of humanity.<sup>36</sup> Kant draws the distinction in this way when distinguishing between perfect and imperfect duties to oneself in the passage from the *Metaphysics of Morals*, quoted at the beginning of the previous section. Kant also draws the distinction in this way in the following two passages from the *Groundwork*. In the first of these passages, Kant discusses one's imperfect duty to oneself and, in the second, one's imperfect duty to others.

*Third*, with respect to contingent (meritorious) duty to oneself it is not enough that the action does not conflict with humanity in our person as an end in itself; it must *harmonize* with it. Now there are in humanity predispositions to greater perfection which belong to the end of nature with respect to humanity in our subject; to neglect these might admittedly be consistent with the *preservation* of humanity as an end in itself but not with the *furtherance* of this end. (G 4:430)

*Fourth*, concerning meritorious duty to others, the natural end that all human beings have is their own happiness. Now, humanity might indeed subsist if no one contributed to the happiness of others but yet did not intentionally withdraw anything from it; but there is still only a negative and not a positive agreement with *humanity as an end in itself* unless everyone also tries, as far as he can to further the ends of others. For the ends of a subject who is an end in itself must as far as possible be also *my* ends, if that representation is to have its *full* effect in me. (G 4:430)

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<sup>36</sup> Paul Guyer, who is sympathetic to this way in which the distinction is drawn, goes as far as presenting it as the only way in which Kant draws the distinction between perfect and imperfect duties. See chapters seven and eight in Guyer (2006). A similar view is taken by Christine Korsgaard. See Korsgaard (1986 and 1988).

However, some actions in conformity with imperfect duties are more naturally thought of as preserving rather than as furthering humanity. For example, helping others who are in distress is in conformity with the imperfect duty of beneficence but doing so is more naturally thought of as preserving rather than as furthering humanity. Indeed, saving someone else's life clearly seems to be an act which preserves humanity, and is yet in conformity with the imperfect duty of beneficence. By saving someone else's life one is not helping this person exercise his rational nature; rather, one is safeguarding the very existence of his rational nature. Similarly, acquiring self-defence skills is in conformity with the imperfect duty of self-perfection but is more naturally thought of as a measure toward the preservation rather than the furtherance of humanity. To make this point clear, suppose that self-defence is the only use to which the skills can be put. Acquiring the skills might not immediately contribute to preserving humanity, and might in fact never if one never faces a threat against which the skills can be put to use. But the contribution that acquiring the self-defence skills makes to humanity, if it makes any contribution at all, is clearly one of preservation. The skills will not help one exercise one's rational nature, but they might safeguard the very existence of one's rational nature.

*Conclusion:*

The conclusion of this section is that the distinction between perfect and imperfect duties based on whether actions preserve or further humanity is unconvincing. Although undoubtedly some actions in conformity with imperfect duties further humanity, other actions in conformity with imperfect duties are more naturally thought of as preserving rather than as furthering humanity.

X. Maxims, Ends, and Actions

Kant also distinguishes between perfect and imperfect duties in the following two different ways, which he mistakenly takes to be the same. According to the first, perfect duties regulate actions whereas imperfect duties regulate maxims. According to the second, perfect duties regulate actions

whereas imperfect duties prescribe ends. Indeed, at one point in the *Metaphysics of Morals*, Kant asserts the following: “Ethics does not give laws for actions (*ius* does that), but only for maxims of actions” (MS 6:389). He goes on to say that “[o]nly the concept of an *end* that is also a duty, a concept that belongs exclusively to ethics, establishes a law for maxims of actions by subordinating the subjective end (that everyone has) to the objective end (that everyone ought to make his end)” (MS 6:389). Commentators have often accepted the idea that choice determined by a maxim and determined by an end is one and the same thing. For example, Gregor says that “[t]o determine choice according to a maxim is to set an end, and vice versa” (Gregor 1963, p. 86). Similarly, Baron says that “all imperfect duties ... are primarily duties to adopt a maxim (or what comes to the same thing, to adopt an end)” (Baron 1987, p. 242). However, it is strange that Kant says that only imperfect duties regulate maxims since clearly some maxims, such as those involving lying or killing, can be regulated in light of perfect duties. In addition, there is no necessary connection between maxims and ends, as discussed in what follows.

Kant defines a maxim as a policy or principle of action that one adopts. For example, in the *Groundwork*, Kant says that a maxim is “the principle in accordance with which the subject *acts*” (G 4:422). Similarly, in the *Metaphysics of Morals*, Kant says that “[a] *maxim* is a *subjective* principle of action, a principle which the subject himself makes his rule (how he wills to act)” (MS 6:225). Therefore, maxims do *not* need to refer to an end. All of the following principles meet the above definition of a maxim, and none of them refers to an end: (a) “I will not commit murder”; (b) “I will sometimes make racist comments”; (c) “I will brush my teeth every morning.” Now at one point in the *Groundwork*, Kant seems to say that all maxims have an end, that an end is the very “matter” of a maxim (G 4:436). Admittedly, a maxim can be defined in such a way that whatever is to count as a maxim must refer to an end. But, it is unclear what would be gained by explaining the distinction between perfect and imperfect duties in terms of maxims that are so defined, rather than directly in terms of ends. It is only

in a derivative sense that such maxims might be able to explain the distinction between perfect and imperfect duties: by virtue of the fact that they are defined in relation to ends.

Directly drawing the distinction between perfect and imperfect duties based on whether duties regulate actions or prescribe ends seems promising. This is because drawing the distinction in this way is consistent with Kant's categorization of ethical duties: perfect ethical duties, such as the duty not to lie and the duty not to commit suicide, regulate actions, and imperfect ethical duties prescribe ends – the happiness of others and the perfection of oneself. In the case of juridical duties, however, the adequacy of drawing the distinction in this way is less clear: all juridical duties are categorized as perfect, but duties that prescribe ends *can* be externally enforced, as has been discussed in section IV.

Finally, drawing the distinction based on the consideration of ends might seem to be the same as drawing the distinction based on the consideration of latitude. This is because if a duty prescribes an end then the duty clearly allows for latitude in how to go about achieving that end. However, these two ways of drawing the distinction are not the same. In section II, it was argued that drawing the distinction based on the consideration of latitude is possible by appealing to the criterion provided in (3\*). According to (3\*), on a given occasion one is permitted not to perform an action in conformity with an imperfect duty as long as one is willing to perform such actions on other occasions – the only exception is if the given occasion is an extreme one. By contrast, one must always act in conformity with a perfect duty. But (3\*) only refers to actions. For example, in the case of the duty of beneficence, (3\*) says that there is a given number of beneficent actions that one must perform over a period of time. Thus, the distinction based on latitude can be explained entirely in terms of actions without any reference to ends. Even if both perfect and imperfect duties are understood as regulating actions, a distinction between them can still be drawn based on the consideration of latitude. The fact that imperfect duties prescribe ends is over and above what is needed in order to distinguish them from perfect duties based on the consideration of latitude.

*Conclusion:*

The conclusion of this section is twofold. (1) Drawing the distinction between perfect and imperfect duties based on the difference between actions and maxims is unhelpful since it depends on how maxims are defined. (2) Drawing the distinction between perfect and imperfect duties based on the difference between actions and ends is promising (putting aside the problem that arises in the case of juridical duties); however, drawing the distinction in this way is not the same as drawing the distinction based on the consideration of latitude.

XI. Conclusion

In this chapter, nine out of the twelve different ways in which Kant draws the distinction between perfect and imperfect duties have been ruled out as untenable. The ways that have not been ruled out are those based on latitude, on exceptions, and on ends; they are respectively numbered 2, 3, and 12 in the table in chapter 1. However, these three ways in which the distinction is drawn are not entirely reconcilable with one another. It has been argued that the distinction based on exceptions is not the same as the distinction based on latitude, and it has also been argued that the distinction based on ends is not the same as the distinction based on latitude.

## Chapter 4: Kant's Assertion of the Priority Claim

### I. Overview

In the last chapter, I discussed the many ways that Kant draws the perfect-imperfect distinction. In this chapter, I look at how he uses that distinction in his moral theory in order to resolve conflicts between duties. In section II of this chapter, textual evidence is provided in order to show that Kant is committed to the following claim: when a perfect duty comes into conflict with an imperfect duty, the first of these two duties always trumps the second. In section III, textual evidence is provided in order to show that, even when Kant switches to talking about a conflict between grounds of obligation instead of a conflict between duties, Kant remains essentially committed the above claim. In section IV, some remarks are made in order to clarify the nature of the conflict between duties here under consideration. Finally, in section V, the different ways in which Kant draws the distinction between a perfect and an imperfect duty are considered once more; it is shown that none of these ways supports Kant's claim that a perfect duty always trumps an imperfect duty.

### II. Kant's Claim

At various points, Kant claims that perfect duties always trump imperfect duties. In his *Lectures on Ethics*, Kant says that "imperfect duties always succumb to perfect ones" (VE.V 27:537). Kant also says that "*in casu collisionis, officia meriti* must always give way to *officia debiti*" (VE.V 27:669). In a note in his copy of Baumgarten's textbook, *Initia philosophiae primae*, Kant asserts that with regard to perfect and imperfect duties "[w]herever these two duties conflict, the first has the upper hand" (N 19:308, Pr 119). Finally, in the *Metaphysics of Morals*, Kant contrasts imperfect duties with perfect duties by saying that the former are "duties of less importance" than the latter (MS 6:418). The very fact that Kant recognizes the possibility of a conflict between duties in these passages – let alone the fact that he claims that a perfect duty always trumps an imperfect duty – might seem surprising. This is because, in other passages, Kant seems to deny that there can be a conflict between duties. However,

as explained in section III, in these other passages Kant does not deny that there can be a conflict between moral considerations; Kant only disapproves of *expressing* this conflict in terms of a conflict between duties.

Kant's claim, that a perfect duty always trumps an imperfect duty, is perhaps most clearly reflected in the position that he takes in the essay *On a Supposed Right to Lie from Philanthropy*. In this essay, Kant considers the following situation: a murderer is at one's door and asks one whether a person, whom this murderer is pursuing, has taken refuge in one's house. Kant asserts that it is wrong to lie to the murderer. Even in this situation of extreme distress, in which one might be able to save another person's life by lying, Kant maintains that the perfect duty not to lie trumps the imperfect of beneficence. In fact, Kant does not only assert that it is wrong to lie in this situation. Kant also asserts that if one does lie then one ought to be held both morally and legally responsible for any adverse consequences that might result from one's lie, even if these consequences were unforeseeable:

It is still possible that, after you have honestly answered "yes" to the murderer's question as to whether his enemy is at home, the latter has nevertheless gone out unnoticed, so that he would not meet the murderer and the deed would not be done; but if you had lied and said that he is not at home, and he has actually gone out (though you are not aware of it), so that the murderer encounters him while going away and perpetrates his deed on him, then you can by right be prosecuted as the author of his death ... one *who tells a lie*, however well disposed he may be, must be responsible for its consequences even before a civil court and must pay the penalty for them, however unforeseen they may have been (VRL 8:427).

In the *Metaphysics of Morals*, Kant takes a similar position when considering the following example: "a householder has ordered his servant to say 'not at home' if a certain human being asks for him. The servant does this and, as a result, the master slips away and commits a serious crime, which would otherwise have been prevented by the guard sent to arrest him" (MS 6:431). In explaining who is guilty in this situation, Kant says that "[s]urely the servant too, who violated a duty to himself by his lie, the results of which his own conscience imputes to him" (MS 6:431). Although Kant stops short of asserting that the servant ought to be held *legally* responsible for the adverse consequence that resulted from

his lie, Kant does assert that the servant bears moral responsibility. Kant's stringent view is also reflected in the position that he takes on "the proposal to preserve the life of a criminal sentenced to death if he agrees to let dangerous experiments be made on him and is lucky enough to survive them, so that in this way physicians learn something new of benefit to the commonwealth" (MS 6:332). Even though accepting the proposal would benefit the whole commonwealth, Kant asserts that "[a] court would reject with contempt such a proposal from a medical college, for justice ceases to be justice if it can be bought for any price whatsoever" (MS 6:332).

### III. Grounds of Obligation

In some passages, Kant says that there cannot be a conflict between duties. In these passages, Kant says that there can be a conflict between grounds of obligation but not between obligations or duties themselves. It is because of a consideration pertaining to the very concept of duty that Kant denies that there can be a conflict between duties. Kant claims that "[t]he very *concept of duty* is already the concept of a *necessitation* (constraint) of free choice through the law" and that the "[t]he moral *imperative* makes this constraint known through the categorical nature of its pronouncement (the unconditional ought)" (MS 6:379). Kant invokes this claim about the concept of duty in order to explain why there cannot be a conflict between duties. He says that "since duty and obligation are concepts that express the objective practical *necessity* of certain actions and two rules opposed to each other cannot be necessary at the same time, if it is a duty to act in accordance with one rule, to act in accordance with the opposite rule is not a duty but even contrary to duty; so a *collision of duties* and obligations is inconceivable (*obligationes non colliduntur*)" (MS 6:224). Thus, when Kant says that there cannot be a conflict between duties, he does not mean to deny there can be a conflict between competing moral considerations, such as between the moral consideration against lying to others and the moral consideration in favor of helping others. He does not mean to deny that, in some situations, acting in conformity with one moral consideration might entail acting contrary to another. Rather, Kant

disapproves of *expressing* such moral conflicts in terms of conflicts between duties, given that a duty is an “unconditional ought.” In order to avoid this conceptual difficulty, Kant expresses such conflicts in terms of conflicts between grounds of obligation. Indeed, Kant says that “a subject may have, in a rule he prescribes to himself, two *grounds* of obligation (*rationes obligandi*), one or the other of which is not sufficient to put him under obligation (*rationes obligandi non obligantes*), so that one of them is not a duty. – When two such grounds conflict with each other, practical philosophy says, not that the stronger obligation takes precedence (*fortior obligatio vincit*) but that the stronger *ground of obligation* prevails (*fortior obligandi ratio vincit*)” (MS 6:224).<sup>37</sup>

Given that Kant expresses moral conflicts in terms of conflicts between grounds of obligation, it might seem that he is amenable to the following, less stringent, view: when grounds of obligation come into conflict they must be weighed against one another, and no ground of obligation has absolute weight. This is essentially the view endorsed by W.D. Ross. If Kant is amenable to this view then what Kant calls “grounds of obligation” are equivalent to what Ross calls “*prima facie* duties.” Ross explains what he means by *prima facie* duties in the following passage: “When I am in a situation, as perhaps I always am, in which more than one of these *prima facie* duties is incumbent on me, what I have to do is to study the situation as fully as I can until I form the considered opinion (it is never more) that in the circumstances one of them is more incumbent than any other; then I am bound to think that to do this *prima facie* duty is my duty *sans phrase* in the situation” (Ross 1930, p. 19). Ross further clarifies that no *prima facie* duty carries absolute weight in the following passage: “I suggest ‘*prima facie* duty’ or ‘conditional duty’ as a brief way of referring to the characteristic (quite distinct from that of being a

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<sup>37</sup> Some commentators have understood Kant as trying to say that there cannot be a conflict between moral considerations. For example, O’Neill (1997) presents various ways in which moral conflicts can be avoided, in order to rescue what she believes Kant is trying to say. O’Neill ultimately acknowledges that moral conflicts cannot always be avoided, and then seems to suggest that Kant has thus failed to recognize an important fact about our moral predicament. However, based on the analysis provided above, Kant has not failed to recognize an important fact about our moral predicament; rather, Kant has recognized an important fact pertaining to the logic of moral discourse: “oughts” cannot conflict.

duty proper) which an act has, in virtue of being of a certain kind (e.g. the keeping of a promise), of being an act which would be a duty proper if it were not at the same time of another kind which is morally significant. Whether an act is a duty proper or actual duty depends on *all* the morally significant kinds it is an instance of" (Ross 1930, p. 19-20).

Admittedly, some passages might appear to suggest that Kant is amenable to the above view. In the previously cited passage from the *Metaphysics of Morals*, Kant only describes the moral conflict as one between two grounds of obligation; he does not say anything to imply that one of the grounds has absolute weight. The following excerpt from the passage might seem to imply that one of the grounds has absolute weight: "one or the other of which is not sufficient to put him under obligation." However, it might also imply the opposite. It is not clear whether Kant is here trying to say that (1) one of the grounds is not sufficient to put one under obligation and so the other ground is in fact sufficient, or that (2) each of the grounds, when considered independently, is not sufficient to put one under obligation – the other ground must also be considered. In addition, some of the casuistical questions, questions Kant raises but does not resolve, might seem to suggest that Kant thinks that no ground of obligation has absolute weight. In particular, they might seem to suggest that a ground of obligation corresponding to a perfect duty does not necessarily prevail over a ground of obligation corresponding to an imperfect duty. For example, the following casuistical questions might seem to suggest that the ground of obligation against committing suicide does not necessarily prevail over the ground of obligation in favor of helping others:

- (1) "Is it murdering oneself to hurl oneself to certain death (like Curtius) in order to save one's country? – or is deliberate martyrdom, sacrificing oneself for the good of all humanity, also to be considered an act of heroism?" (MS 6:423)
- (2) "Can a great king who died recently [Frederick the Great] be charged with a criminal intention for carrying a fast-acting poison with him, presumably so that if he were captured when he led his

troops into battle he could not be forced to agree to conditions of ransom harmful to his state?”

(MS 6:423)

- (3) “A man who had been bitten by a mad dog already felt hydrophobia coming on. He explained, in a letter he left, that, since as far as he knew the disease was incurable, he was taking his life lest he harm others as well in his madness (the onset of which he already felt). Did he do wrong?” (MS 6:423)

However, although the above passages might seem to suggest that Kant is amenable to Ross’s view, other passages unambiguously show that Kant is not. At various points, Kant makes it clear that he thinks that there are some grounds of obligation that always prevail over other grounds. Kant also makes it clear that the first of these grounds correspond to perfect duties whereas the second correspond to imperfect duties. Indeed, in the following three passages, Kant clearly asserts that a perfect ground of obligation always prevails over an imperfect ground of obligation.

In a passage from the *Critique of Practical Reason*, Kant says that one should ask “whether the action objectively *conforms with the moral law*, and with which law; by this, attention to such law as provides merely a *ground* of obligation is distinguished 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 nonessential duties), and thus one teaches how to distinguish different duties that come together in an action” (KpV 5:159). Kant here distinguishes between a law that “provides merely a *ground* of obligation,” on the one hand, and a law “which is in fact *obligatory*,” on the other. Although Kant does not say that the second of these laws provides a ground, Kant’s point can be faithfully conveyed as follows: there are mere grounds of obligation, on the one hand, and grounds that are in fact obligating, on the other. The first of these grounds are associated with imperfect duties,

with what Kant here refers to as “nonessential duties,” whereas the second are associated with perfect duties, with what Kant here refers to as “essential duties.”

In a passage from his *Lectures on Ethics*, Kant first says that “[l]aws and rules could not be universal, and thus necessary, if the opposite were not impossible; so two universal duties cannot contradict one another; it is only the grounds of duty, the *rationes obligandi*, that are in conflict here, because each of them would only be an insufficient ground for determining the act of duty” (VE.V 27:537). So far, the passage seems consistent with the view that no ground of obligation has absolute weight. However, Kant goes on to say the following:

... for example, a friend has shown me kindness, and falls into distress; as such, I certainly owe him gratitude, but *in quovis casu* this duty is only an *obligatio late determinans*. Suppose the money I might give to be already earmarked for payment of a debt; this is a greater obligation, since it binds absolutely, and though its *ratio obligandi* – reciprocation – may here come into conflict, even in respect of fairness, with the creditor’s affluence, and the fact that it would do me no harm not to pay him now, and other *rationes obligandi*, it is nevertheless easy to decide which *rationes* lose their weight – duty settles the matter. (VE.V 27:537)

Kant now distinguishes between a ground or a reason that “binds absolutely,” on the one hand, and “other *rationes obligandi*,” on the other. Clearly, a reason that “binds absolutely” outweighs a reason that does not; as Kant says, reasons that do not bind absolutely “lose their weight” when compared against reasons that do. Kant also associates a reason that binds absolutely with a perfect duty, in this case with the juridical duty of repaying a debt, and a reason that does not bind absolutely with an imperfect duty, in this case with the ethical duty of gratitude. Kant even asserts that in deciding between these reasons “duty settles the matter.” Strictly speaking, Kant should not invoke the term “duty” at this point. Duty is the outcome of weighing grounds or reasons against one another. Even if some grounds have absolute weight, invoking the term “duty” at this point blurs the conceptual distinction between a ground and a duty. Nevertheless, it is clear what Kant is trying to convey by invoking the term “duty”: there are some grounds that always outweigh others.

In another passage from his *Lectures on Ethics*, Kant first says that “[d]uty always contains a *ratio obligans*, or sufficient reason obligating to the dutiful act; directly opposed to this, however, is *ratio obligandi*, i.e., any other reason, insufficient though it be, and the statement that, on collision, *causa moralis potior vincit* (the stronger moral cause wins) means only that the ground of obligation that is not sufficient still yields no obligation” (VE.V 27:508). So far, Kant might only be saying that there is always a ground of obligation that ultimately prevails, which he seeks to distinguish from other grounds by calling it *ratio obligans*. In other words, Kant might only be saying that it is always the case that a ground of obligation prevails, and not that there are some grounds of obligation that always prevail. However, Kant goes on to say the following: “if testifying is injurious to a father or benefactor, and the latter withholds my benefits, these relationships, of filial duty, and of gratitude, are merely *rationes obligandi* running counter to the duty of truth-telling, and to the plain rectitude as *ratio obligans*” (VE.V 27:508). By way of this example, Kant again makes it clear that he thinks that a ground of obligation corresponding to a perfect duty always prevails over a ground of obligation corresponding to an imperfect duty.

In sum, Kant sometimes switches from talking about a conflict between duties to talking about a conflict between grounds of obligation in order to avoid a conceptual difficulty. The switch is not accompanied by a substantive change in Kant’s view. Kant remains essentially committed to the claim that a perfect duty always trumps an imperfect duty. Kant only expresses this claim differently, by saying that a ground of obligation corresponding to a perfect duty always prevails over a ground of obligation corresponding to an imperfect duty. Since there is no substantive change in Kant’s view when he switches to talking about a conflict between grounds of obligation, I will consider the matter understood as the conflict between a perfect and an imperfect duty. To this I turn in the following section.

#### IV. Clarifying Remarks

The following remarks are intended to clarify the nature of the conflict between duties that is here under consideration, as conflicts between duties can take various forms. First, the conflict is not one between duties originating from two different moral systems. The question is not whether one should yield to one moral system rather than to another. Instead, the conflict is between duties originating from the *same* moral system: Kant's moral system. Second, it is the simple case of a conflict between one perfect duty and one imperfect duty that is here examined. This is not to deny that a conflict can arise between one perfect duty, on the one hand, and two or more imperfect duties, on the other. For example, it might be necessary to tell one lie in order to be able to act in conformity with the duty of beneficence and in order to be able to act in conformity with the duty of self-perfection. Although Kant's claim that a perfect duty always trumps an imperfect duty is less stringent than the claim that a perfect duty always trumps any number of imperfect duties, Kant presumably thinks that the latter is true as well. It might seem that in order for a perfect duty to conflict with two imperfect duties that the two imperfect duties must conflict with one another. However, this is not true. A set of three duties,  $\{D_1, D_2, D_3\}$ , can be inconsistent without any set of any two of these duties,  $\{D_1, D_2\}$ ,  $\{D_1, D_3\}$ , or  $\{D_2, D_3\}$ , being inconsistent. Therefore, even if someone thought that two imperfect duties cannot come into conflict, this would not be a reason for him to think that one perfect duty cannot come into conflict with two imperfect duties.

Third, the conflict between duties that is here examined does not result from a lack of information. For example, the fact that one knows that the person at the door is a murderer does not dissolve the conflict between lying to this person and helping the person in the house. In fact, had one not known that the person at the door is a murderer then one would not have recognized the existence of a conflict between lying to this person, on the one hand, and helping the person in the house, on the other. In order to see how the conflict here examined is different from one that results from a lack

of information, consider the following example. A teacher has evidence revealing that one and only one of two students violated a school policy, but the evidence gives no further indication suggesting that one of the two students is more likely to have violated the policy than the other. The teacher is also committed to the following three duties: (D<sub>1</sub>) the duty to punish a guilty student, (D<sub>2</sub>) the duty not to punish an innocent student, and (D<sub>3</sub>) the duty to only punish a student based on a fair and reliable procedure. The teacher can act in one of the following three ways: (a) punish neither student, (b) punish both students, or (c) randomly punish one of the two students. Each of these courses of action violates at least one of the duties that the teacher is committed to: (a) violates (D<sub>1</sub>); (b) violates (D<sub>2</sub>) and (D<sub>3</sub>); (c) violates (D<sub>3</sub>) if the teacher punishes the guilty student, and (c) violates (D<sub>1</sub>), (D<sub>2</sub>), and (D<sub>3</sub>) if the teacher punishes the innocent student. Had the teacher known which of the two students violated the school policy, there would not have been a conflict between any of these three duties.

Fourth, the conflict between duties that is here examined is not necessarily one in which the duties require one to carry out two incompatible actions. According to Daniel Statman, “[m]oral conflicts are situations in which agents have (or at least seem to have) a duty to carry out two different actions, while in the circumstances they can carry out only one” (Statman 1996, p. 214). However, Statman only describes one of several ways in which a conflict between duties can arise at the level of action. In particular, if a duty commands the omission or the commission of a single action, then two such duties can conflict in one of all of the following four ways:

(1) “Do X” and “Don’t do X”

- These commands are in conflict in all possible worlds.

(2) “Do X” and “Do Y”

- These commands are in conflict in worlds in which doing X and doing Y are incompatible. For example, “be friends with Jamie” and “be friends with Eric” are in conflict in worlds in which if one is friends with Jamie then Eric will not be one’s friend.

(3) “Do X” and “Don’t do Y”

- These commands are in conflict in worlds in which doing X and not doing Y are incompatible. For example, “go to law school” and “don’t take the LSAT exam” are in conflict in worlds in which taking the LSAT exam is a prerequisite for going to law school.

(4) “Don’t do X” and “Don’t do Y”

- These commands are in conflict in worlds in which not doing X and not doing Y are incompatible. For example, “don’t eat” and “don’t starve” are in conflict in worlds in which medical techniques have not been developed for keeping a person from starving without this person having to eat.

Fifth, the conflict between duties that is here examined is one between duties that the *same* person must fulfil. This is different from a conflict between duties that different persons must fulfil. To illustrate this second type of conflict, suppose that a runner promises someone to win a race and that a rival runner promises someone else to win that same race. Both runners cannot fulfil their promise. Although this type of conflict is not here examined, this is not to deny that it is an important type of conflict in relation to Kant’s moral philosophy. The fact that it is not possible for all agents to fulfil their duties in harmony with one another does raise some questions about what a “Kingdom of Ends” is supposed to look like.

Sixth, the conflict between duties that is here examined is one between a perfect and an imperfect duty. There can also be conflicts between two perfect duties, as well as conflicts between two imperfect duties. The following are examples of situations in which a conflict between two perfect duties arises: (a) one promises someone to do X and one also promises someone else not to do X, (b) one promises someone that one will lie to someone else. Although it is clear that a conflict between perfect duties can arise, it is less clear whether such a conflict can arise without any wrongdoing on one’s part.<sup>38</sup> As for two imperfect duties, they might conflict as a result of a constraint in time. For example, on a given occasion, it seems that one can act in conformity with the imperfect duty of

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<sup>38</sup> For an interesting discussion of this question, see Donagan (1984 and 1993). See also chapter twelve in Hill (2002).

beneficence or with the imperfect duty of self-perfection, but not with both. If there are enough occasions on which one can act in conformity with either of these duties, then a conflict does not arise. But, if there is a shortage of such occasions, for example if one spends almost all of one's time at the office, then a conflict does seem to arise; it then does not seem possible to fulfil both imperfect duties.<sup>39</sup> As for the possibility of a conflict between a perfect and an imperfect duty, which is the type of conflict here examined, Statman asserts that "logically speaking, perfect duties and imperfect ones can simply never come into conflict" (Statman 1996, p. 214). He says that this is because "the agent is not torn between the demands of two masters, because one master [the perfect duty] requires unequivocally "Do A!", the other [the imperfect duty] demands, "Do either A<sub>1</sub>, or A<sub>2</sub>, or A<sub>3</sub> ..., or A<sub>n</sub>!" Thus, the agent can quite easily obey both masters and no dilemma arises" (Statman 1996, p. 214). However, what Statman says is unconvincing. Logically speaking, an action that is in conformity with a perfect duty *can* be incompatible with *all* of the actions that are in conformity with an imperfect duty. Moreover, imperfect duties do not allow for as much latitude as Statman seems to think. As has been discussed, in the case of some actions that are in conformity with an imperfect duty, the imperfect duty requires that these very actions be performed – it does not allow for other actions to be performed instead. For example, the imperfect duty of beneficence requires that one help a person who is in distress, whether or not one is willing to help others on other occasions. In the case of the murderer at the door, the conflict between the duty not to lie and the duty of beneficence is not avoided by the fact that one is willing to help others on other occasions. The duty of beneficence requires that, on this occasion, one help the person hiding in one's house.

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<sup>39</sup> But perhaps such a conflict can be avoided if one maintains that how much an imperfect duty requires of one depends on how much free time one has. On this view, the lesser the time one has to perform actions in conformity with an imperfect duty, the smaller the number of actions that one is required to perform in conformity with an imperfect duty.

V. Drawing the Distinction Considered Once More

Now that the nature of the conflict between duties here examined has been clarified, Kant's claim that a perfect duty always trumps an imperfect duty can be more easily assessed. The different ways in which Kant draws the distinction between a perfect and an imperfect duty can be considered once more in order to determine whether any one of these supports Kant's claim. Since all but three of these ways have been ruled out as untenable, it is actually only these three ways that need to be considered once more. Indeed, even if one of the ways that has been ruled out suggests that some duties always trump other duties, these duties would not respectively correspond to Kant's perfect and imperfect duties. Nevertheless, in what follows, most of the ways of drawing the distinction that have been ruled out are considered once more. First considered are the three ways that have not been ruled out, since these are the ones on which the viability of Kant's claim depends.

(a) *Allow for Latitude*

The fact that one duty allows for more latitude than a second duty does not imply that the first duty is always trumped by the second. This is explained by means of the following example.

Suppose that performing any one of three acts –  $X_1$ ,  $X_2$ , and  $X_3$  – fulfils an imperfect duty whereas only performing one act,  $X_4$ , fulfils a perfect duty. Suppose also that  $X_4$  is compatible with  $X_1$  and  $X_2$  but incompatible with  $X_3$ . Admittedly, among the two acts that are incompatible with one another,  $X_3$  and  $X_4$ , one should perform the act that fulfils the perfect duty,  $X_4$ , instead of the act that fulfils the imperfect duty,  $X_3$ . However, this is only because the imperfect duty can still be fulfilled by performing another act,  $X_1$  or  $X_2$ . The fact that in such a situation one should perform the act that fulfils the perfect duty instead of the act that is incompatible with it and that fulfils the imperfect duty does not reveal that perfect duties trump imperfect duties. The reason why one should perform the act that fulfils the perfect duty is that one should try to fulfil both duties if one can. One can fulfil both duties if one performs the act that fulfils the perfect duty, since one can still perform one of the other acts that

fulfils the imperfect duty. On the other hand, one cannot fulfil both duties if one performs the act that fulfils the imperfect duty that is incompatible with the sole act that fulfils the perfect duty. In other words, by performing the act that fulfils the perfect duty instead of the act that fulfils the imperfect duty that is incompatible with it, one is not yielding to the perfect duty instead of yielding to the imperfect duty. Rather, one is exploiting the fact that the imperfect duty can be fulfilled in more than one way in order to avoid a conflict between duties altogether.

Now suppose that  $X_4$  is incompatible with all of  $X_1$ ,  $X_2$ , and  $X_3$ . The result is that a conflict between duties is unavoidable. Moreover, there now does not seem to be any reason for performing the act that fulfils the perfect duty instead of performing any one of the acts that fulfils the imperfect duty. In order to determine which duty to fulfil, it seems that one would need to know something more substantive about the duties and not just the mere formal fact that one of the duties allows for more latitude than the other. It seems possible that the duty that can be fulfilled in more than one way is of greater importance than the duty that can be fulfilled in only one way.<sup>40</sup>

(b) *Prescribe Ends*

The argument for why an end-prescribing duty does not necessarily trump an action-regulating duty is similar to the argument provided above. Admittedly, one should perform an action in conformity with an action-regulating duty instead of an action in conformity with an end-prescribing duty, if an equivalent action directed at this end can be performed as a substitute. However, if there is no equivalent action that can be performed as a substitute, then performing the action in conformity with the perfect duty *detracts* from achieving the end prescribed by the imperfect duty.<sup>41</sup> In other

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<sup>40</sup> In the next chapter, an attempt is made to tease out a substantive principle from how the perfect-imperfect distinction is drawn based on the consideration of latitude. However, even if such a substantive commitment does exist, it still does not alter the result of this section, which is that the distinction based on latitude does not support the priority claim.

<sup>41</sup> The reason why no equivalent action can be performed as a substitute might well be that all equivalent actions are also incompatible with the action in conformity with the perfect duty.

words, a conflict between duties has not been avoided by the fact that one of the duties prescribes an end. When such a conflict occurs, it does not seem to follow from the mere fact that one of the duties regulates an action whereas the other prescribes an end that the former of these duties trumps the latter. Once again, in order to determine which of the two duties one should obey, more substantive information about the duties seems needed: what is the action that the first of these duties regulates and what is the end that the second prescribes?

(c) *Admit of Exceptions*

Kant says that one can make an exception to performing an action that is in conformity with an imperfect duty *only if* it is in order to perform another action that is also in conformity with a duty. The difference between a perfect and an imperfect duty therefore seems to be that although one can give priority to a perfect duty over an imperfect duty, one cannot give priority to an imperfect duty over a perfect duty. It is unclear, however, whether this should be taken as (1) a license to *always* give priority to a perfect duty over an imperfect duty, or (2) a license to *sometimes* give priority to a perfect duty over an imperfect duty. If it is the second, then clearly the claim that perfect duties *always* trump imperfect duties is not supported by this way of drawing the distinction. Moreover, even if it is the first, this way of drawing the distinction falls short of vindicating Kant's claim. This is because Kant's claim is not that, on all occasions when there is a conflict between a perfect and an imperfect duty, one *can* give priority to the former. Rather, Kant's claim is that, on all such occasions, one *ought* to give priority to the former. In other words, Kant does not merely claim that it is always *permissible* to give priority to a perfect duty but that it is always *mandatory* to give priority to a perfect duty. Of course, the claim that it is always permissible to give priority to a perfect duty is not morally insignificant. For example, it entails that one is permitted not to lie to the murderer at the door whereas one's intuitions might be that one *must* lie to the murderer. But the position that Kant wants to vindicate is even stronger. Kant's position is that one *ought* not to lie to the murderer.

(d) *Contradiction in Conception and in Will*

Timmerman argues that the test of the universalizability of maxims supports Kant's claim that a perfect duty always trumps an imperfect duty because of what Kant says in the following passage: "Some actions are so constituted that their maxim cannot even be *thought* without contradiction as a universal law of nature, far less could one *will* that it *should* become such. In the case of others, that inner impossibility is indeed not to be found, but it is still impossible to *will* that it *should* become such" (G 4:424). Timmerman states his argument as follows:

'Far less could one *will* that they *should* become such'! Kant reveals the reason for the primacy of strict duty in this sentence: *all* actions contrary to duty cannot possibly be willed to be universal laws, they all generate what has been called a 'contradiction in the will'; some actions, *in addition*, also generate a 'contradiction in conception' because their maxim cannot even be conceived as universal if we want it to be successful. Maxims that, if 'universalized' in the Kantian manner, generate a contradiction in conception *also* generate a contradiction in the will, whereas the reverse is not true. (Timmerman 2004, p. 17)

However, it is far from clear that, if a maxim cannot be universalized for two different reasons, then the corresponding duty is of greater importance than if the maxim cannot be universalized for only one of these reasons. The test of the universalizability of maxims is intended to rule out maxims. If a maxim fails this test for one reason, then the maxim is ruled out. If a maxim fails this test for another reason as well, then the maxim is still ruled out. Just as someone who is shot with two bullets through the heart is no more dead than someone who is only shot with one, a maxim that is ruled out for two different reasons is no more ruled out than a maxim that is only ruled out for one.

(e) *External Enforcement*

Assuming that perfect duties are legal duties whereas imperfect duties are not, the following reason might be given for why perfect duties always trump imperfect duties: one should always first comply with what is required by the law before complying with other moral requirements. However, this reason does not seem convincing. The fact that a duty is legally enforced might give further moral reason to obey the duty, since obeying the law might carry some moral weight. But, obeying the law

certainly does not seem to carry decisive moral weight. For example, suppose that one had a choice to either repay a loan in the amount of 1 pence to a rich person or to donate 1 million pounds to persons who are poor, and for some reason could not do both. Morally, it seems that one ought to perform the second of the two actions, or, at least, that one is permitted to perform the second of the two actions. Yet, performing the second of the two actions fulfils an imperfect ethical duty at the cost of violating a perfect juridical duty.

*(f) Supererogatory Action*

The distinction between perfect and imperfect duties based on supererogatory action might seem to provide the basis for the following argument, in support of Kant's claim that perfect duties always trump imperfect duties. (1) If one performs an action in conformity with a perfect duty instead of an action in conformity with an imperfect duty, then one performs an action that is right, and one's failure to perform the alternative action is not wrong. (2) By contrast, if one performs an action in conformity with an imperfect duty instead of an action in conformity with a perfect duty, then one performs an action that is right but one's failure to perform the alternative action is wrong. (3) The trade-off works out in favor of complying with the perfect duty: one right and no wrong is better than one right and one wrong. (4) Therefore, perfect duties always trump imperfect duties.

Now of the four arguments, discussed in section VI of the previous chapter, for why actions in conformity with imperfect duties can be thought of as supererogatory, the second argument seems to be the most persuasive – even though it too was rejected. According to this argument, performing actions of a given type, beyond the number that is required by an imperfect duty, is supererogatory. For example, performing actions of beneficence, once enough such actions have been performed, is supererogatory. However, based on this argument for why actions in conformity with imperfect duties can be thought of as supererogatory, one only faces the trade-off described above once enough actions in conformity with the imperfect duty have already been performed. Before enough such actions have

been performed, it is wrong not to perform an action in conformity with the imperfect duty. Since conflicts between a perfect and an imperfect duty can occur before enough actions in conformity with the imperfect duty have been performed, drawing the distinction between duties based on supererogation does not vindicate Kant's claim that perfect duties *always* trump imperfect duties.

(g) *Omission and Commission of Actions*

There does not seem to be any reason to think that a duty that commands the omission of an action is more important than a duty that commands the commission of an action. For example, it is more important that a student obey the command "do study for the exam" than that he obey the command "don't take too many breaks during the exam" or the command "don't forget to take an extra pen with you to the exam." It might seem that negative and positive duties cannot come into conflict, given the difference in kind between these duties. In response, the following two points can be made. First, the claim that negative and positive duties cannot come into conflict is not equivalent to the claim that negative duties always *trump* positive duties. Second, the claim that negative and positive duties cannot come into conflict is false. For example, performing an action, the omission of which is commanded by one duty, might be necessary in order to perform another action, the commission of which is commanded by another duty.

(h) *Preservation and Furtherance of Humanity*

As has been discussed, some actions in conformity with imperfect duties are more naturally thought of as preserving rather than as furthering humanity. As a result, the claim that perfect duties always trump imperfect duties cannot be justified based on the difference between the preservation and the furtherance of humanity. For example, this difference cannot help resolve the conflict between duties that arises when there is a murderer at the door. In this situation, the conflict between duties is internal to the consideration that one should preserve humanity. This consideration suggests that one should save the life of the person in the house and it also suggests, according to Kant, that one should

not lie to the murderer. Since acting contrary to the imperfect duty also undermines the preservation of humanity in this situation, the difference between the preservation and the furtherance of humanity cannot resolve the conflict in favor of the perfect duty.

(i) *The Other Ways*

The two distinctions based on correlative rights have not been directly discussed again in this section because what applies to the distinction based on external enforceability also applies to them. The distinction based on motives and the distinction based on maxims have not been discussed again given that they seemed not only untenable but also confused. All other ways in which Kant draws the distinction have been discussed again.

VI. The “Argument from Inclinations”

(a) *The challenge*

So far in this chapter, only two types of reasons for action have been considered: perfect duties and imperfect duties. No serious attention has been given to a third type of reasons: inclinations. As a result, the analysis so far – which has yielded the conclusion that it is not necessary for a perfect duty to have priority over an imperfect duty – might seem incomplete. Indeed, a critic might argue that because the analysis has not considered whether an imperfect duty can have priority over a perfect duty *while taking into account the whole range of possible reasons for action*, the conclusion has only been conditionally supported. In particular, according to the critic, it has only been supported under the *assumption* that perfect and imperfect duties are the sole possible reasons for action. In other words, according to the critic, perhaps Kant is not mistaken after all once inclinations are taken into account. In what follows, this possible objection is anticipated by including inclinations into the analysis. It is shown that even when inclinations are factored in, the perfect-imperfect distinction does not actually support the priority claim.

In addition to a general methodological worry about completeness or comprehensiveness of treatment, why might a critic object to the fact that inclinations have been left out of the analysis? In other words, why might a critic suspect that paying careful attention to inclinations reverse the result of the analysis so far? In particular, what is it about the status of inclinations in relation to the two other reasons for action (perfect and imperfect duties) that might lead a critic to suspect that inclinations do have an effect on the relative ordering of these two other reasons?

Kant says that one *cannot* in a given circumstance perform an action in conformity with an inclination over performing an action in conformity with a perfect duty. Kant also says that one *can* in a given circumstance perform an action in conformity with an inclination over performing an action in conformity with an imperfect duty.<sup>42</sup> In light of these two statements, it might seem that the following argument in support of the priority claim can be made:

- (1) Perfect duties have priority over inclinations.
- (2) Inclinations have priority over imperfect duties.
- (3) Therefore, by transitivity, perfect duties have priority over imperfect duties.

Given the way in which it is stated above, the “argument from inclinations” does seem persuasive; it does seem to support the priority claim. Indeed, the argument has a clear and simple logical structure. Only three variables are involved – inclinations, perfect duties, and imperfect duties – and a transitivity relation is said to hold between them leading to the desired conclusion: perfect duties have priority over imperfect duties. Moreover, the relationship between these three variables does seem transitive. On the one hand, Kant speaks about competing reasons for action by drawing an analogy to the relation between different weights, which is itself a transitive relation. For instance, Kant says that grounds of obligation for an imperfect duty “lose their weight” before grounds of

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<sup>42</sup> The words “can” and “cannot” are here used to denote a moral possibility and a moral impossibility respectively – as opposed, for example, to a physical, metaphysical, or logical possibility and impossibility.

obligation for a perfect duty (VE.V 27:537). On the other hand, it seems natural to think of the relationship between competing reasons as transitive since these reasons can compete all at once, not necessarily only two at a time, and so a common, across-the-board, metric or scale seems needed.

Nonetheless, in order to more fully appreciate the appeal of the “argument from inclinations”, it is helpful to restate it in the form of a *reductio ad absurdum*. As shown below, if one starts by positing the reversal of the priority claim and also takes onboard the claim that inclinations have priority over imperfect duties, one arrives at the conclusion that inclinations have priority over perfect duties:

- (A) Imperfect duties have priority over perfect duties.
- (B) Inclinations have priority over imperfect duties.
- (C) Therefore, by transitivity, inclinations have priority over perfect duties.

However, since Kant says that one *cannot* in a given circumstance perform an action in conformity with an inclination over performing an action in conformity with a perfect duty, one cannot accept the conclusion arrived at above. Furthermore, since the second premise is based on what Kant says, one is led to reject the initial assumption: the reversal of the priority claim.

The advantage of stating the argument in the form of a *reductio* lies in the fact that doing so helps to bring out what appears to be the *substantive* problem with reversing the priority claim once inclinations are taken into account. Indeed, the claim that inclinations have priority over perfect duties (the conclusion arrived at above) is not only in contradiction with what Kant *says*. It is also a claim that Kant clearly cannot accept given what it *means*. In practical terms, the claim means that one is permitted (if not required) to lie, to murder, to steal, or to perform any other action in violation of a perfect duty for the sake of furthering one’s own interests – for the sake of satisfying an inclination. But the very least that can be asserted with certainty about Kant’s “rigorist” moral philosophy, if it is to be rigorist in any way at all, is that it does *not* allow for the performance of such actions in the expectation of securing a private gain. In other words, once inclinations are taken into account,

reversing the priority claim appears to commit Kant to a result that is in sharp opposition to any plausible interpretation of his view.

(b) *Response to the challenge*

Although attractive, the “argument from inclinations” does not work. It suffers from at least two serious problems. Both of these problems pertain to the second premise in the “argument from inclinations.” Here again is the second premise, listed in the above two versions of the argument as (2) and (B) respectively:

(2) Inclinations have priority over imperfect duties.

Essentially, the problem with this premise is that it is a bad paraphrase, a mistranslation, of Kant’s assertion that one *can* in a given circumstance perform an action in conformity with an inclination over performing an action in conformity with an imperfect duty. In effect, each of the two specific problems with this premise corresponds to a different way in which Kant’s assertion is mistranslated.

The first problem is that in formulating the premise “can” is confused with “must” and “sometimes” is confused with “always”. Indeed, the premise states that imperfect duties *must always* yield to inclinations whereas Kant only says that actions in conformity with imperfect duties *can sometimes* yield to actions in conformity with inclinations. The following amended premise corrects for this mistake:

(2\*) Imperfect duties do not always have priority over inclinations.

But, if (2) is replaced by (2\*) in the “argument from inclinations”, the transitivity relation collapses. The following is no longer true of the argument: A first variable has priority over a second variable, which in turn has priority over a third variable, such that it can be inferred, by transitivity, that the first variable has priority over the third.

In order to flesh out this point further, it might be helpful to consider a claim that is similar but *not* equivalent to (2\*):

(2\*\*) Sometimes, inclinations have priority over imperfect duties.

(2\*\*) says that sometimes one must act in conformity with an inclination over acting in conformity with an imperfect duty. (2\*\*) is “stronger” (in the direction of favoring inclinations) than (2\*). (2\*) only says that sometimes one is permitted to act on inclinations – that sometimes one is allowed, though not required, to do so. Comparing (2\*) to (2\*\*) underscores that from the fact that imperfect duties do not have priority over inclinations it does not necessarily follow that the reverse is true: Inclinations have priority over imperfect duties. Had this actually followed, it would have been possible to partially salvage the “argument from inclinations.” Indeed, it would have at least been possible to draw the restricted implication that perfect duties have priority over imperfect duties *when* inclinations have priority over imperfect duties. But since inclinations *never* have priority over imperfect duties, the conclusion of the “argument from inclinations” can *never* actually be salvaged.

While the first problem with (2) is that it essentially mistranslates a choice into a necessity, the second problem with (2) is that it fundamentally misidentifies the nature of the choice (or necessity) that one might face. In particular, it incorrectly translates a choice between two types of action, between two courses of action, into a choice between two *reasons* for action: imperfect duties and inclinations.

As mentioned in section III of the previous chapter, it is mistaken to think of imperfect duties as optional *per se*. Instead, it is performing actions that are in conformity with imperfect duties that might be optional. There is of course a conceptual difference between (a) sometimes flouting the command “Always help others” and (b) always respecting the command “Sometimes help others.” Moreover, the issue is not merely a conceptual one since Kant makes it repeatedly clear that an inclination can never override a duty.

Admittedly, Kant believes that happiness is valuable. After all, happiness is a constituent part of what Kant calls the “highest good”. However, Kant believes that happiness is valuable only when it

is restricted or conditioned by morality – happiness is not an absolute good. In particular, inclinations and the pursuit of happiness cannot replace moral reasons as the motive for action. They cannot replace respect for duties, whether perfect or imperfect, as the determining ground for action. The following are a few of the many passages in which Kant makes it clear that the idea that one can break the moral law for one's own sake is off the table:

Only what is connected with my will merely as ground and never as effect, what does not serve my inclination but outweighs it or at least excludes it altogether from calculations in making a choice – hence the mere law for itself – can be an object of respect and so a command. Now, an action from duty is to put aside entirely the influence of inclination and with it every object of the will; hence there is left for the will nothing that could determine it except objectively the *law* and subjectively *pure respect* for this practical law, and so the maxim of complying with such a law even if it infringes upon all my inclinations. (G 4:400)

*Duty!* Sublime and mighty name that embraces nothing charming or insinuating but requires submission, and yet does not seek to move the will by threatening anything that would arouse natural aversion or terror in the mind but only holds forth a law that of itself finds entry into the mind and yet gains reluctant reverence (though not always obedience), a law before which all inclinations are dumb, even though they secretly work against it; what origin is there worthy of you, and where is to be found the root of your noble descent which proudly rejects all kinship with the inclinations, descent from which is the indispensable condition of that worth which human beings alone can give themselves? (KdrV 5:86)

[T]he representation of the moral law deprives self-love of its influence and self-conceit of its illusion, and thereby the hindrance to pure practical reason is lessened and the representation of the superiority of its objective law to the impulses of sensibility is produced and hence, by removal of the counterweight, the relative weightiness of the law (with regard to a will affected by impulses) in the judgment of reason. And so respect for the law is not the incentive to morality; instead it is morality itself subjectively considered as an incentive inasmuch as pure practical reason, by rejecting all the claims of self-love in opposition with its own, supplies authority to the law, which now alone has influence. (KpV 5:76)

Whereas it is mistaken to say that an inclination can override an imperfect duty, it is correct to make the following observation: Given the logical structure of imperfect duties, an action that is in conformity with an inclination can override an action that is in conformity with an imperfect duty. This

is because one can still *satisfy* an imperfect duty without performing all actions that are in conformity with it. For Kant, the choice or trade-off between an action in conformity with an imperfect duty and an action in conformity with an inclination is one that can only arise *within* the framework or context of satisfying an imperfect duty. It is the imperfect duties that “leave it to the agent” how far to pursue certain actions (VE.V 27:578). In other words, when one sometimes satisfies an inclination instead of performing an action in conformity with an imperfect duty, what goes on is *not* “a resistance of inclination to the percept of reason (*antagonismus*), through which the universality of the principle (*universalitas*) is changed into mere generality (*generalitas*)” (G 4:424). Since happiness can outweigh an action that falls under an imperfect duty but can never strike down the imperfect duty *per se*, the “argument from inclinations” fails. Indeed, (2) must be replaced by (2\*\*\*):

(2\*\*\*) Imperfect duties have priority over inclinations.

Once this is done, there is no longer any transitivity relation of which to speak. We are back at the standard Kantian view that *both* perfect duties and imperfect duties override inclinations – a view that appears to carry no implications whatsoever for the relation between perfect and imperfect duties themselves.

## VII. Conclusion

In this chapter, Kant’s claim that perfect duties always trump imperfect duties has been presented and assessed. Kant explicitly makes this claim on several occasions, and his treatment of some examples also strongly suggests that he is committed to this claim. Moreover, even when Kant switches to talking about a conflict between grounds of obligation instead of a conflict between duties, Kant essentially remains committed to this claim. However, despite Kant’s insistence that perfect duties always trump imperfect duties, none of the ways in which Kant draws the distinction between perfect and imperfect duties supports his claim. Moreover, even when inclinations are factored into

the analysis, it remains the case that the perfect-imperfect distinction does not actually support the priority claim.

## Chapter 5: The Normative Implications of the Perfect-Imperfect Distinction

### I. Introduction

In the previous chapter, it was shown that not one of the many different ways in which Kant draws the distinction between perfect and imperfect duties actually supports the priority claim. In other words, it was shown that the distinction does not actually yield the normative implication that Kant takes it to yield: Perfect duties have priority over imperfect duties. Therefore, the overall argument of the previous chapter might reasonably be described as “negative” or “critical” in nature. This is because a key claim that Kant asserts was there undermined.

That said, on the flip side, there was also a positive upshot for Kant’s moral philosophy resulting from the argument of the previous chapter. After all, it was shown that Kant’s system of duties does *not* in fact entail the “rigorism” or “strictness” that has often attracted Kant’s moral philosophy much criticism. In particular, Kant’s distinction between perfect and imperfect duties was shown *not* to in fact lend support to the position that he takes in his essay *On a Supposed Right to Lie from Philanthropy*. In that essay, Kant takes the position that one is forbidden to lie even if to a murderer and in order to save a human life. This position has seemed extreme and counter-intuitive to many people. They believe that one is morally permitted to lie to a murderer, and perhaps even morally required to do so. Because it leads to a position that they consider absurd, they have rejected, or at least cast serious doubt on, Kant’s moral philosophy. Therefore, by showing that Kant’s system of duties does not in fact support the priority claim, the argument of the previous chapter actually *strengthens* the case for Kant’s moral philosophy. It helps *shield* it from a potentially damaging objection. It has an overall *positive* impact on its plausibility and viability.

Yet, the “positive” aspect of the argument of the previous chapter might seem secondary, the by-product of an essentially critical line of reasoning. By contrast, the argument of this chapter is more straightforwardly “positive” or “constructive”. It is here shown that although the perfect-imperfect

distinction does not support the priority claim, the distinction is neither always normatively neutral nor always normatively uninteresting. More specifically, it is shown both that some of the ways in which the distinction is drawn actually carry normative implications and also that these implications, when they exist, are in the “direction” of the priority claim. In other words, perfect duties are “favored” or “privileged” over imperfect duties. The chapter provides answers to the following questions in particular:

- (I) When does the distinction between perfect and imperfect duties carry normative implications?
- (II) What are the normative implications that the distinction carries?
- (III) What exactly does it mean for the implications to be in the “direction” of the priority claim or, equivalently, for perfect duties to be “favoured” or “privileged”?
- (IV) Are the normative implications the same across the different ways in which the distinction is drawn? If not, are they reconcilable?

## II. Clarifying Remarks

Before considering once more the different ways in which the distinction is drawn, several clarifying remarks seem needed. Indeed, although they are extensive, these remarks help to avoid misunderstandings of the arguments that follow. On the one hand, they provide explanations that *anchor* the rest of the discussion. On the other hand, some of them *develop* the conceptual apparatus and framework that is relied upon in the rest of the chapter.

### (a) *The Distinction and the Moral Law*

One issue it seems important to highlight at the outset is that even though the Moral Law is of central importance to Kant’s moral theory, only one of the ways in which Kant draws the perfect-imperfect distinction actually *depends* on the Moral Law. Indeed, aside from when Kant draws the distinction based on the Universalizability Test (i.e. based on the difference between a contradiction in

*conception* and a contradiction in *will*), Kant does not invoke the Moral Law in any one of the ways in which he draws the distinction. This fact has three noteworthy consequences (except for when the distinction is drawn based on the Universalizability Test of course).

First, one can determine the normative implication that results from the distinction *without* considering or referring back to the Moral Law. This is a methodological point pertaining to *how* the investigation of this chapter is carried out.

Second, whatever normative implications actually result from the distinction, they hold true not only on the assumption that one is committed to the Moral Law. In other words, the implications are not *contingent* on the Moral Law. Thus, if the actual normative implications that are found to result from the distinction are too strong or too weak, it is not due to any specific Kantian commitment. For instance, suppose that the normative implications uncovered in this chapter seem counter-intuitive (much as how the priority claim seemed counter-intuitive in the previous chapter). The fact that the implications seem counter-intuitive does not undermine Kant's moral theory alone. It undermines *any duty-based system*, whether moral or legal, as long as the duties contained in this system fall on both sides of the perfect-imperfect divide. In other words, it is irrelevant whether another philosopher *deliberately chooses* to draw the perfect-imperfect distinction in a way in which Kant does. What only matters is that the duties, found in this other philosopher's theory, can in fact be categorized in this way.

Third, and in light of the second consequence, the findings of this chapter (i.e. the normative implications that actually follow from the perfect-imperfect distinction) are likely to be of interest to an audience that is not limited to Kantians and Kant scholars. Indeed, they are likely to be of interest to all those who are concerned with duty-based moral systems.

(b) *The Terms “Perfect” and “Imperfect”*

The very idea of investigating whether the perfect-imperfect distinction might yield an implication other than the priority claim might seem confusing or even misguided. After all, by definition, don't “perfect” duties have priority over “imperfect” duties? Isn't asking whether the former might not overrule the latter equivalent to asking whether a “tall” person might not be taller than a “short” person? This confusion arises for the following reason. Following Kant, we are employing the terms “perfect” and “imperfect” in order to denote categories of duties, such as the legal/non-legal categories and the preservation/furtherance categories. We do not want to presuppose any ranking, but the terms “perfect” and “imperfect” already suggest a priority ordering. In other words, the terms are tendentious or prejudicial. Fortunately, it seems that this confusion can be overcome by keeping in mind that, unlike in the case of Kant's writings, the terms perfect and imperfect are not here *used* in order to make any statement about the importance of the duties. Instead, the terms are here simply *mentioned* in order to refer to the two underlying categories of duties, without presupposing any ordering or ranking.<sup>43</sup>

(c) *Yet another Normative Claim?*

The following is a different worry that might arise in relation to the project of this chapter: We already have two duties, so two normative claims, and we know that we cannot satisfy both, so what is the point in trying to uncover yet another normative claim? To put it plainly, if fruitful, won't the investigation of this chapter only add to our burdens? Fortunately, it won't. This is because the normative claim that will be uncovered, like the priority claim for that matter, is understood as *supplanting* both the directive of the perfect duty and that of the imperfect duty. How exactly this works out is explained in what follows, starting with the next clarifying remark and leading to remark

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<sup>43</sup> In order to avoid this confusion, for some readers, it might be easier to think of the duties as “P” duties and “I” duties. This alternative terminology has not been adopted in this chapter, however, as it seems to make some portions of the text harder, rather than easier, to read.

(i), where a disjunctive perfect-imperfect duty is laid down. The very fact that this investigation does not result in an *additional* normative claim is worth flagging early on; hence this remark.

(d) *The Purpose of Grounds of Obligation*

The fact that Kant sometimes switches from talking about a conflict between duties to talking about a conflict between grounds of obligation was discussed in the previous chapter. Based on textual evidence, it was shown that this switch is not accompanied by any substantive change in Kant's view. Kant essentially remains committed to the claim that a perfect duty always overrides an imperfect duty. He merely *expresses* this claim differently, in order to avoid a conceptual difficulty. Indeed, according to Kant, "[t]he very *concept of duty* is already the concept of a *necessitation* (constraint) of free choice through the law" and, therefore, it is technically mistaken to speak of a conflict arising between duties or of a duty overriding another duty (MS 6:379). Kant gets around this conceptual difficulty by asserting one of the following two claims, both of which operate as substitutes that are, in effect, equivalent to the priority claim:

- A ground of obligation that corresponds to a perfect duty always has *greater* weight than a ground of obligation that corresponds to an imperfect duty.
- A ground of obligation that corresponds to a perfect duty always has *absolute* weight.

But here is a possible worry that might arise. Since Kant does not make a substantive change to his view when he switches from talking about duties to talking about grounds of obligation, it might appear as though there is nothing further to investigate in this chapter. Indeed, it might seem as though there is no alternative normative implication that could possibly be uncovered by further investigating the relationship between "perfect" and "imperfect" moral reasons; trying to do so might seem predictably futile. This is because even at the level that underlies duties – the level of grounds of

obligation – the issue seems to be entirely settled by Kant. Indeed, even at this more fundamental level, Kant asserts the absolute priority of the “perfect” over the “imperfect”.

Given the above possible worry about the fruitfulness of the undertaking of this chapter, it is important to clarify here that there is actually no philosophical “work” or “action” that takes place at the level of grounds of obligation. What Kant says about perfect and imperfect grounds is merely a *restatement* of what he already says about perfect and imperfect duties. He does not bring anything further to the table – by way of argument or explanation – when he discusses grounds of obligation. He merely invokes grounds in order to more correctly *express* the priority claim. What might be misleading is that Kant talks about duties as resulting from a *process* whereby grounds are weighed against one another; he says that it is only *after* a conflict between grounds is resolved that a duty comes into existence. Naturally, this sequential model suggests that grounds are more fundamental and that it is at their level that the following basic question is actually resolved: Which duty has priority over which other duty?

However, as already pointed out, Kant only sets up this model as a device in order to avoid violating what he believes to be an important rule pertaining to the logic of moral discourse: “oughts” cannot conflict. He does not set it up in order to make any independent argument about, or provide any insight into, the relationship between “perfect” and “imperfect” moral reasons. In other words, considerations pertaining to grounds are better thought of as formalistic, than as substantive. The source of the normativity lies elsewhere – something else must account for the comparative strengths of “perfect” and “imperfect” grounds. Indeed, what *is* fundamental is not what Kant *claims* about grounds, but how he *draws* the perfect-imperfect distinction, irrespective of whether he draws it at the level of grounds or duties. It is precisely how he draws the distinction, not how he expresses it, which must be examined more closely in order to see if any normative implication actually exists. This is the project carried out in this chapter.

(e) *The Existence of Different Possible Alternatives to the Priority Claim*

A further worry, again about the effectiveness of the investigation of this chapter, comes from the fact that it has already been established, in the previous chapter, that there is no necessary priority of a perfect duty over an imperfect duty. Indeed, in light of this previous finding, what is the point in continuing to examine, in this chapter, the priority relationship that may hold between a perfect duty and an imperfect duty?

In response, it is possible to point out that, for all we know so far, the strict priority relationship *can* run in the opposite direction. Indeed, it has not yet been shown that an imperfect duty does not always override a perfect duty. Furthermore, it is possible to point out that the argument of the previous chapter does not rule out many ordering relationships that *do* involve the priority of a perfect duty over an imperfect duty *sometimes*. Indeed, even if there is no *necessary* priority of a perfect duty over an imperfect duty, it does not follow that it is *never* morally necessary to act in conformity with a perfect duty over an imperfect duty. The rejection of the priority claim is compatible with the view that it is required – in some situations – to act in conformity with a perfect duty rather than an imperfect duty. Thus, even after having rejected the priority claim in the previous chapter, it still makes sense to investigate, in this chapter, whether *any* priority relation exists *at all* between a perfect and an imperfect duty.

To take the above clarification one step further, it seems helpful to distinguish between the following three basic claims:

- (1) There is *a single* ordering of duties that holds across *all* situations.
- (2) In *any given* situation, there is *an* ordering of duties.
- (3) In *some* situations, there is *an* ordering of duties.

The priority claim entails (1), and so does its opposite, which says that imperfect duties always override perfect duties. What these two claims have in common is that they are *non-sensitive* to situational differences.

However, not all alternatives to the priority claim entail (1). For example, the following is an alternative to the priority claim that *is sensitive* to situational differences, and that entails (2) instead of (1):

“D”: In some situations, call them situations of type  $\alpha$ , perfect duties have priority over imperfect duties, but in all other situations, call them situations of type  $\beta$ , imperfect duties have priority over perfect duties.

With respect to “D”, the following is not the only philosophically challenging question: What determines whether a duty is perfect or imperfect? This is because, unlike in the cases of the priority claim and its opposite, the terms “perfect” and “imperfect” no longer necessarily convey a sense of ranking – a sense of greater or lesser weight. Another philosophically challenging question is now relevant to “D”: What determines whether a situation is of type  $\alpha$  or  $\beta$ ? More specifically, what is the difference between situations of type  $\alpha$  and situations of type  $\beta$ , such that perfect duties trump imperfect duties in  $\alpha$  whereas the reverse is true in  $\beta$ ?

In addition, some alternatives to the priority claim *are sensitive* to situational differences but, unlike “D”, entail (3) instead of (2). The following is an example:

“E”: In some situations, call them situations of type  $\alpha$ , perfect duties have priority over imperfect duties, but in all other situations, call them situations of type  $\beta$ , neither perfect duties nor imperfect duties have priority over the other.

In the case of “E”, figuring out whether a situation is of type  $\alpha$  or  $\beta$  is also important. In particular, the following is the relevant question: What is the difference between situations of type  $\alpha$  and situations

of type  $\beta$ , such that perfect duties trump imperfect duties in  $\alpha$  whereas *no priority relation exists at all* in  $\beta$ ?

As it turns out, “E” is the normative implication that actually results from each of the ways in which the perfect-imperfect distinction is drawn, provided that the way does in fact yield a normative implication. When the different ways in which the distinction is drawn are revisited in this chapter, it will be demonstrated that “E” results from the perfect-imperfect distinction. The abovementioned question will be especially relevant to that discussion since, although “E” is the general form of all of the normative implications that result from the perfect-imperfect distinction, there exist some differences in detail that vary depending on how the distinction is drawn. In particular, which situations count as type  $\alpha$  and which count as type  $\beta$  do to some extent vary depending on the way in which the distinction is drawn.

To illustrate just how much difference can potentially exist under the same overarching normative claim “E”, consider the following two normative positions:

- In one single situation of conflict, perfect duties trump imperfect duties. In all other situations of conflict, there is no perfect-imperfect priority.
- In one single situation of conflict, there is no perfect-imperfect priority. In all other situations of conflict, perfect duties trump imperfect duties.

Clearly, the above two positions are very different from one another. Yet, they both fall under “E”.

Finally, before concluding this remark, it is worth highlighting that “D” and “E” are not the only possible alternatives to the priority claim. The full range of theoretically possible alternatives can be generated from the following three basic claims:

- (i) It is mandatory to yield to a perfect duty over an imperfect duty.
- (ii) It is mandatory to yield to an imperfect duty over a perfect duty.

(iii) It is neither mandatory to yield to a perfect duty nor mandatory to yield to an imperfect duty.

From these three claims, seven overarching normative claims can be generated. They are listed below.

Their meaning and the arrow sign (shown below) are then discussed.

“A”: In situations of conflict between duties, (i) is always true.

“B”: In situations of conflict between duties, (ii) is always true.

“C”: In situations of conflict between duties, (iii) is always true.

“D”: In situations of conflict between duties, sometimes (i) is true and all other times (ii) is true.

“E”: In situations of conflict between duties, sometimes (i) is true and all other times (iii) is true.

“F”: In situations of conflict between duties, sometimes (ii) is true and all other times (iii) is true.

“G”: In situations of conflict between duties, sometimes (i) is true, other times (ii) is true, and all further times (iii) is true.

The meaning of the above claims need not be opaque. “A” corresponds to the priority claim. “B” corresponds to its opposite: Imperfect duties always trump perfect duties. “C” corresponds to the claim that there is never any priority relationship at all between perfect duties and imperfect duties. “D” was already discussed above; it says that sometimes perfect duties have priority over imperfect duties but all other times the reverse is true. “E” was also already discussed; it is the alternative that matters most for our purposes – it corresponds to the normative implication that actually results from the perfect-imperfect distinction. “F” can be thought of as the mirror image of “E”; it says that sometimes imperfect duties trump perfect duties whereas all other times there is no priority relationship one way or the other. “G” allows for all arrangements; it says that sometimes perfect

duties trump imperfect duties, sometimes the reverse is true, and all other times there is no priority relationship one way or the other. One final point, given these letter labels the change advocated in this chapter can be concisely stated as follows: Replace “A” with “E”. This is what the above arrow represents.

(f) *Unpacking “E” – the “Privilege Claim”*

Since “E” is the alternative that matters most to us, it makes sense to further clarify its meaning. In particular, the following question is of clear interest: What is the difference between “E” and the priority claim, and what is its philosophical significance?

To begin with, we can observe that “E” is a claim about the *strength* of perfect duties relative to imperfect duties. Indeed, “E” implies the following:

- Perfect duties, and only perfect duties, *can* operate as trumps.
- Perfect duties sometimes, and only sometimes, *do* operate as trumps.

In other words, “E” says the following two things about perfect duties:

- They *never* get overridden by imperfect duties.
- They *sometimes* override imperfect duties.

In order to further understand “E”, it is helpful to consider again claims (i), (ii), and (iii) listed above. With respect to the framework consisting of these three claim, “E” asserts the following:

- (ii) is never true.
- (i) is only sometimes true.

Indeed, the first of these two assertions – (ii) is never true – rules out all of the following alternatives: “B”, “C”, “D”, “F”, and “G”. This leaves out only two options: “A” (the priority claim) and “E”. But the second assertion – (i) is only sometimes true – rules out “A”, and so “E” is the sole survivor of the elimination process. Thus, the difference between “E” and the priority claim lies in whether claim (i) is always true (as in the case of the priority claim) or only sometimes true (as in the case of “E”). In other

words, it lies in whether it is always true, or only sometimes true, that it is mandatory to yield to a perfect duty over an imperfect duty. Given this fact, “E” can be understood as a *weakening* or *softening* of the priority claim. Indeed, “E” basically expresses the idea that perfect duties do not have “absolute priority” over imperfect duties, contrary to what Kant claims, but remain “privileged” or “favored” over imperfect duties since they sometimes have priority over the latter whereas the reverse is never true. Therefore, by opposition to the “priority claim”, “E” can be referred to as the “privilege claim”. Also, just as the “priority claim” label was useful for getting a handle on the central claim in the previous chapter, the “privilege claim” label will be useful in this chapter.

(g) *Lack of Priority Results from Equality, not Incommensurability*

As already discussed, according to the privilege claim sometimes there is a *lack* of perfect-imperfect priority. In other words, sometimes it is neither mandatory to yield to a perfect duty nor mandatory to yield to an imperfect duty. But what still needs to be clarified is the nature of this lack of priority and what it results from. In particular, is there no priority because the duties (or their corresponding grounds) are incommensurable or because they are equal in strength?

Incommensurability is one candidate cause for the lack of priority found in the privilege claim. Indeed, if values, principles, or commitments are in conflict with one another *and* they cannot be weighed against one another because they cannot be put on the same scale – because they cannot be reduced to a common measure – then there is a lack of priority. Indeed, no comparative relation, whether of priority or otherwise, can hold between the alternatives in such a case. Joseph Raz helpfully offers the following definition of incommensurability: Two alternatives are incommensurable if and only if it is *false* that of the two of them “either one is better than the other or they are of equal value” (Raz 1986, p. 342). Thus according to this definition, if perfect and imperfect duties are incommensurable then neither one of them can stand in any one of the following three relations to the other: (a) stronger than, (b) weaker than, and (c) equally as strong as.

However, incommensurability is not the only candidate cause for a lack of priority. Furthermore, the lack of perfect-imperfect priority, found in the privilege claim, does *not* result from incommensurability. Indeed, it does *not* result from the fact that the two conflicting duties or grounds are somehow incomparable. This would be a strange view to hold since one would then need to be committed to the odd idea that perfect and imperfect duties are commensurable sometimes (when perfect duties override imperfect duties) but incommensurable other times (when there is no priority). In other words, one would need to be committed to the idea that perfect and imperfect duties switch back-in-forth between commensurability and incommensurability. Furthermore, as discussed in remark (b) above, Kant *is* committed to “weighing” perfect and imperfect grounds of obligation against one another. He *is* happy picking a “winning” and a “losing” ground.<sup>44</sup>

Instead, the lack of priority of the privilege claim results from the fact that perfect and imperfect grounds are sometimes *equal* in strength or weight. There is a lack of priority because the competing grounds “score the same” or “tie” – the outcome of weighing perfect and imperfect grounds of obligation is a “draw”. Yet it might be asked: How can a tie possibly arise between two competing grounds? What are the chances that a perfect ground and an imperfect ground have *exactly* the same weight? The fact that they do should become apparent when the different ways in which the distinction is drawn are discussed anew – the proof of the pudding is in the eating. But a conceptual explanation can still be offered at this point to help appease the skeptical response:

- A tie arises because an imperfect duty becomes effectively “just like” a perfect duty.

What Kant categorizes as an imperfect duty can no longer be distinguished from a perfect duty by appealing to the very way in which Kant draws the distinction.

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<sup>44</sup> Admittedly, unlike in the case of *grounds*, Kant is not happy picking out a winning and a losing *duty*. But this is only because he is opposed to conceiving of duties as conflicting in the first place, for reasons relating to the logic of moral discourse, as already discussed. This discrepancy is in no way suggestive of the idea that Kant thinks of perfect and imperfect duties as incommensurable.

Moreover, owing to the fact that it takes on the same *descriptive features* as a perfect duty, an imperfect duty acquires the same *normative standing* as a perfect duty. For example, in the case of the distinction drawn based on the consideration of latitude, a tie occurs if the imperfect duty does not allow for latitude “just like” or “in the same way as” a perfect duty.<sup>45</sup> In sum, a tie occurs because an imperfect duty “rises up” to the level of a perfect duty, swapping features that are typical of an imperfect duty for features that are typical of a perfect duty. As a result, the weight of an imperfect duty “sinks down” to that of a perfect duty.

One final point merits clarification here. Since the above-described account involves the notion of weights, and equality in weights in particular, it might seem that the actual value of these weights matters and will be an object of concern to us. However, this is not the case. On the one hand, the numerical value of the weight at which perfect and imperfect duties balance one another, when they do, depends on the scale or measure that is assumed. The value of this weight is therefore *arbitrary*. On the other hand, even if perfect and imperfect duties do have an “objective” weight, there is a lack of priority *whenever* the competing duties are equal in weight, irrespective of the given value. What the value of the weight happens to be is *irrelevant*.

(h) *Lack of Priority Results from Real Equality, not Epistemic Equality*

A second clarifying remark seems needed pertaining to the nature and root cause of the lack of priority of the privilege claim. In the previous remark, it was explained that it results from an equality in the weight of competing moral grounds, not from incommensurability. Yet, the following question is left standing: Are these competing grounds *actually* equal in weight or do we just have to *treat* them as equal in weight? Indeed, we might need to treat them as equal because we do not *know*, and are

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<sup>45</sup> When this way in which the distinction is drawn is revisited in the course of this chapter, it will be explained what exactly it means for an imperfect duty to allow for latitude “just like” or “in the same way as” a perfect duty.

unable to *determine*, which of them actually has greater weight. Such an “epistemic predicament” would seem analogous to how we might sometimes be unable to *know* whether a coin has landed heads or tails (perhaps because the coin is in a faraway location) even though, as a matter of fact, the coin has landed on one of its two sides. In such a situation, we might say that *from our perspective* the chances that the coin has landed heads or tails are the same since the coin is fair (i.e. unbiased). Moreover, it would be rational for us to *treat* these alternatives as equal by, for example, betting as much money on each of them. Nonetheless, as a matter of fact, the status of the coin has already been determined; we might even know that it has been, although not in which direction.

Returning to competing moral grounds or duties, it might likewise sometimes be true that we are unable to *know* whether a perfect duty has priority over an imperfect duty, even though, as a matter of fact, there is a priority relation that holds between them. For instance, for the purposes of explanation, suppose that normative claim “D”, which was discussed in remark (c) above, is true. As a reminder, according to “D”, sometimes perfect duties have priority over imperfect duties whereas all other times imperfect duties have priority over perfect duties.<sup>46</sup> In addition, suppose that one is confronted with the following situation: Someone knocks at one’s door and asks one about the whereabouts of a person whom they are pursuing. The situation is identical to the one of the “murderer at the door”, found in *On a Supposed Right to Lie from Philanthropy*, except for the following differences:

- One does not know that the inquirer at the door is a murderer.
- One does know that the inquirer is either a murderer or a police officer, both of whom are chasing the fugitive for different reasons.

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<sup>46</sup> In principle, the same point could have been illustrated by relying on normative claim “E” – the privilege claim. But for matters of simplicity in presentation, “D” was here assumed. The exposition is easier with “D” because, according to this claim, there is *never* an actual equality in weights between perfect and imperfect duties. Since equality in weights is not built-into “D”, the idea of epistemic equality, which we are here trying to shed light on, is easier to bring out. Epistemic equality is the only type of equality that could arise in relation to “D”.

- One does not know which of the two it is and one has no way of figuring out.
- One does know that the chances that the inquirer is a murderer or a police officer are exactly the same (or perhaps more realistically, one has no way of estimating the likelihood of either of these two possibilities).

Now what should one do in the above-described situation? The following seem to be two plausible applications of “D”:

- If it is a *police officer* who is at the door then the perfect duty not to lie has priority over the imperfect duty to help others.
- If it is a *murderer* who is at the door then the reverse is true: The imperfect duty to help others has priority over the perfect duty not to lie.

Unfortunately, the matter is complicated by the fact that, in the above-described situation, one does not know whether it is a murderer or a police officer who is actually at the door.<sup>47</sup> Indeed, although “D” might be a good criterion for right and wrong – stating which duty has priority over which other duty – it seems lacking as a decision procedure for action. Moreover, since from one’s perspective the odds that the inquirer is a police officer are the same as the odds that the inquirer is a murderer, it follows that from one’s perspective the odds that a perfect duty has priority over an imperfect duty are the same as the odds that an imperfect duty has priority over a perfect duty. Thus, it can be said that there is a certain “equality” between a perfect duty and an imperfect duty – an equality from the vantage point of the moral cognizer or deliberator. Nonetheless, one of the two duties *does* have priority over the other, and which of the two it is strictly depends on whether it is a police officer or a murderer who is actually at the door.

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<sup>47</sup> To use the terminology of remark (c), one does not know whether the situation is of type  $\alpha$  or  $\beta$ .

However, in contrast to the above hypothetical scenario, when it is said about the privilege claim that a perfect ground and an imperfect ground are sometimes equal in weight, it is not meant that one is unable to *know* which of the two actually has greater weight. This possibility is indeed *compatible* with the privilege claim, but it is not what the privilege claim is about. Instead, what the privilege claim is picking up on is the idea that sometimes there is no priority relation that holds between perfect and imperfect duties. This is because, in these situations, the weights of the competing grounds are actually the same. Indeed, according to the privilege claim, one might know everything there is to know about a situation and still be unable to speak of a priority. In sum, the lack of priority, captured in the privilege claim, does not correspond to one's limitations as a moral cognizer or deliberator. Instead, it is at the fundamental level of the duties themselves – it is a feature that characterizes Kant's system of duties.

(i) *From Lack of Priority to Permissibility – the Theoretical Underpinnings*

In the previous two clarifying remarks, it was explained that the lack of priority of the privilege claim results neither from incommensurability nor from epistemic limitations, but from a real equality in the weight of competing grounds. But what still needs to be clarified is the moral import of this lack of priority. Indeed, what does it normatively entail? How does it guide action? In particular, does it entail permissibility? If so, what is the scope of this permissibility?

To begin with, it is helpful to note the following: The lack of perfect-imperfect priority of the privilege claim is a case in point of when duties, taken together, do not determine, or do not fully determine, the normative status of all actions. To explain this claim, consider first, for comparison purposes, the following two theoretical possibilities where there *is* perfect-imperfect priority:

- The perfect duty not to lie trumps the imperfect duty to help others. As a result, in the murderer at the door scenario, the normative status of the following actions *is* determined:

- Lying to the murderer is forbidden.
- Helping the fugitive is forbidden; this is because helping the fugitive can only be achieved by lying to the murderer.
- The imperfect duty to help others trumps the perfect duty not to lie. As a result, in the murderer at the door scenario, the normative status of the following actions *is* determined:
  - Helping the fugitive is required.
  - Lying to the murderer is required; this is because lying to the murderer is necessary in order to help the fugitive.

By contrast, if there is *no* perfect-imperfect priority then the normative status of the above two courses of action – lying to the murderer and helping the fugitive – is *not* determined by the duties. Indeed, the duties neither tell us that the actions are forbidden nor tell us that they are required. They also do not tell us that they are permitted. In a sense, figuratively speaking, the duties are “silent” on the status of the actions.

What are we to make of this “silence”? Luckily for our investigation, it is not only when there is no priority between two competing duties that the duties or rules of a normative system do not sort some actions into any one of the following three exhaustive and mutually exclusive categories: required, forbidden, and permitted (or “merely permitted”, as Kant prefers to call them, in order to emphasize their *strictly optional* nature). Indeed, such cases are likely to often arise simply because the scope of the duties or rules is not cast wide enough to cover all actions. Thus, it is possible for us to examine what happens, in general, when the duties or rules of a system are “silent” on the status of some actions and to then draw the relevant inferences.

Now in any normative system, whether it be moral or legal, if the duties or rules do not specify the normative status of some actions then the status of these actions can still be determined by an all-

encompassing background principle that is included as part of the system. Indeed, consider the following two background principles in particular:

- *Permissive Background Principle (PBP)*: Any action that is not explicitly restricted (whether by a duty of omission or commission) is permitted.
- *Restrictive Background Principle (RBP)*: Any action that is not explicitly permitted is restricted (whether required or forbidden).

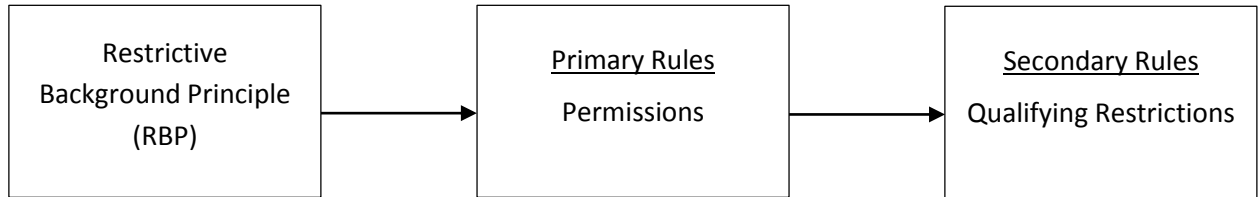
A PBP and an RBP can respectively serve as the baseline for a “restrictive” and “permissive” normative system. Moreover, a normative system with no background principle can be called “incomplete”. These three types of systems are further explained below (see also the illustrative diagrams that follow):

- A restrictive system curtails liberties, already in place by virtue of a PBP, by requiring and/or forbidding certain actions. Although a restrictive system might specifically permit some actions, these permissions are redundant unless they carve out exceptions to the restrictions.
- A permissive system frees up actions, which are antecedently restricted by a RBP, by stating that they are in fact neither required nor forbidden but allowed. Restrictive rules in a permissive system, if they exist at all, serve a secondary function: They limit the scope of the permissions.
- An incomplete system is one where there is no background principle. In other words, if the status of an action is not determined by any duty or rule of the system then its status is left undetermined by the system as a whole. Thus, an incomplete system is one that may contain “gaps”: It does not necessarily dictate a status (required, forbidden, or permitted) for every possible action.

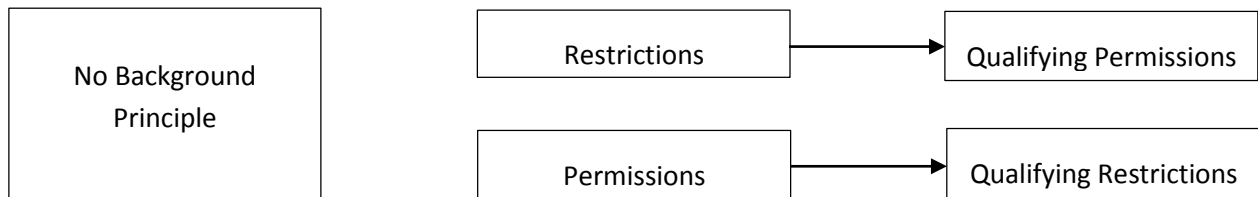
(1) Restrictive system:



(2) Permissive system:



(3) Incomplete system:



In light of the above three accounts, it seems that the answer to what happens when there is a lack of perfect-imperfect priority depends on whether a PBP, an RBP, or no background principle at all is included as part of Kant’s normative system. In the next clarifying remark, it will be shown, based on textual evidence, that Kant *is* committed to a PBP – that he does include it as part of his system, even if implicitly. As a result, the “silence” of the lack of priority of the privilege translates into a permission.

Yet, before concluding this remark, the extent of this “silence” needs to be clarified, so that the scope of the permission that ensues from it can be determined with precision. Because there are moral considerations that are relevant to situations of lack of priority, clearly any outcome in which none of these considerations are respected – in which all duties are violated – is unacceptable. In other words, two competing duties, taken together, do tell us not to choose a course of action that does not satisfy any one of them. They are not here silent. What they do *not* tell us, when taken together, is

which of them one must choose to satisfy. This is where they are silent. And this where the PBP comes in to play. For example, when neither the perfect duty of honesty (the obligation not to lie) nor the imperfect obligation of beneficence (the obligation to help others) overrides the other, the PBP says that both alternative courses of action are permitted. In other words, it says that one is permitted to choose between honesty and beneficence, between not lying and helping others. However, the PBP does not have the reach necessary to say that one is permitted to choose between satisfying one of the two competing moral obligations and satisfying neither. One *must* act in accordance with at least one of them.

To further understand the normative implication that results from the lack of perfect-imperfect priority, consider the structure of an imperfect duty. An imperfect duty does two things: It *allows* one to choose within a range of actions and, at the same time, it *requires* one to choose within that range. For example, an imperfect duty allows one to choose between helping “person 1” and helping “person 2”, and also between helping today and helping tomorrow. However, it still does require one to help *some* person at *some* time. Similarly, the absence of a perfect-imperfect priority opens up a range of *limited permissibility*. Indeed, when there is no perfect-imperfect priority, a *disjunctive duty* results from both the perfect and imperfect grounds of obligation, and the normative implications of this disjunctive duty have the same form as those of an imperfect duty, as shown below:

- *Normative implications of a perfect-imperfect disjunctive duty:*
  - $\neg$  req (honest)
  - $\neg$  req (beneficent)
  - req (honest v beneficent)
  - In sum:  $\neg$  req (honest) &  $\neg$  req (beneficent) & req (honest v beneficent)
- *Normative implications of an imperfect duty:*
  - $\neg$  req (help person 1)

- - req (help person 2)
- req (help person 1 v help person 2)
- In sum: - req (help person 1) & - req (help person 2) & req (help person 1 v help person 2)

(j) *From Lack of Priority to Permissibility – the Textual Evidence*

We have now finished showing why, and to what extent, a lack of priority entails permissibly *if* a PBP is assumed. We are now ready to show that Kant *is* committed to a PBP. Unfortunately, Kant never *explicitly* formulates a PBP. Thus, showing that he is committed to one will take some work. Fortunately, on several occasions, Kant speaks of a permissive law – a *lex permissiva* or *leges permissivae*. By closely examining these writings and others, it becomes clear that he is *implicitly* committed to a PBP. The investigation will first be carried out with respect to Kant’s legal philosophy, and then with respect to his moral philosophy.

In his legal philosophy, Kant clearly assigns permissive rules a secondary status. Their function is to qualify restrictions that are already imposed. He fleshes out this view in the following passage from *Toward Perpetual Peace*:

Whether, in addition to commands (*leges praeceptivae*) and prohibitions (*leges prohibitivae*), there could also be *permissive laws* (*leges permissivae*) of pure reason has hitherto been doubted, and not without grounds. For laws as such involve a ground of objective practical necessity, whereas permissions involve a ground of the practical contingency of certain actions [...] I wanted only to draw the attention of teachers of natural right to the concept of a *lex permissiva*, which reason presents of itself in its systematic divisions, especially since in civil (statutory) law use is often made of the concept, but with the following difference: the prohibitive law stands all by itself and the permission is not included in that law as a limiting condition (as it should be) but is thrown in among exceptions to it. Then it is said that this or that is prohibited, *except* for number 1, number 2, number 3, and so forth indefinitely, since permissions are added to the law only contingently, not in accordance with a principle but by groping about among cases that come up; for otherwise the conditions would have had to be introduced *into the formula of the prohibitive law*, and in this way it would have become at the same time a permissive law. (TPP 8:348)

In the above passage, Kant nominally objects to describing permissive rules as constituting “exceptions” to restrictions. However, this is only because he is fervently committed to the idea that permissive rules are not independent rules at all. He is insistent that permissive rules can be dispensed with altogether, if only the restrictive rules were stated with enough specificity. Thus, although it might *prima facie* seem otherwise, Kant’s objection to defining permissive rules as “exceptions” is actually evidence for the thesis that permissive rules occupy a subordinate position in his legal philosophy. To put it plainly, even calling them exceptions would be too much, according to Kant.

In addition to stating the above general remark about the status and role of permissive rules, the issue of permissions also arises in the discussion of the following example in *Toward Perpetual Peace*:

Although the laws cited above are objectively, that is, in the intention of the ruler, laws of prohibition only (*leges prohibitivae*), nevertheless some of them are of the strict kind (*leges strictae*), holding without regard for differing circumstances, that insist on his putting a stop to an abuse at once [...] but others [...] are laws that, taking into consideration the circumstances in which they are to be applied, subjectively widen his authorization (*leges latae*) and contain permissions, not to make exceptions to the rule of right, but to postpone putting these laws into effect, without however losing sight of the end; he may not postpone to a nonexistent date (*ad calendas graecas*, as Augustus used to promise) putting into effect the law [...] he is permitted only to delay doing so, lest implementing the law prematurely counteract its very purpose. (TPP 8:347)

In the above passage, the obligation in question is the general one held by the ruler to apply the law; it is the obligation that comes with occupying the position of sovereign. Kant says that the permission, when invoked, allows the ruler to *postpone* performing an action, but it does not constitute an “exception”. The reason Kant gives, this time, is that the permission is not a license to always flout the obligation – the ruler *does* at some point need to enforce the law. To begin with, it is worth noting that this reason is not very convincing. Even though a postponement is not a permanent exemption, it can still be defined as a specific *type* of exception. In particular, it can be defined as an exception that allows the ruler to not *sometimes* act in accordance with the obligation to apply the law – an exception to the

obligation *to always apply the law*. In any case, regardless of whether the permission is defined as an exception or not, Kant's use of permissions in this example confirms the following thesis: Permissions serve to qualify restrictions that are already imposed; they are subsidiary in status.

The only other mention of permissive rules in Kant's legal philosophy is the one found in the following passage from the *Metaphysics of Morals*:

This postulate can be called a permissive law (*lex permissiva*) of practical reason, which gives us an authorization that could not be got from mere concepts of right as such, namely to put all others under an obligation, which they would not otherwise have, to refrain from using certain objects of our choice because we have been the first to take them into our possession. Reason wills that this hold as a principle, and it does this as *practical* reason, which extends itself a priori by this postulate of reason. (MM 6:247)

What Kant here means by a permissive rule is very different from the idea of an exception to a restriction, putting aside the issue of whether Kant likes to call secondary rules exceptions or not. It is so different that it would have probably been better had Kant opted for a different name altogether. Indeed, a permissive rule here refers to the following: a rule that *confers* authority on individuals, whether public or private, to create structures of rights and obligations that are legally valid and enforceable. In other words, a permissive rule corresponds to a rule that *grants* individuals legal rights to generate *further* legal rights. On this understanding, a permissive rule is an "enabler".

To clarify this point, it is helpful to refer to a distinction drawn, in contemporary analytic jurisprudence, by H.L.A. Hart. Both in his own account of law and in his critique of the reductionist conception of law advanced by John Austin, which analogizes law to the simple model of orders backed by threats, Hart emphasizes the existence of two categories of rules:

- First-order rules, which direct human conduct (requiring, forbidding, or permitting certain actions)
- Second-order rules, which confer authority onto individuals to contribute to the life of the law (for example, that empower individuals to change first-order rules)

The following are two representative passages in which Hart asserts this view:

Surely not all laws order people to do or not to do things. Is it not misleading so to classify laws which confer powers on private individuals to make wills, contracts, or marriages, and laws which give powers to officials, e.g. to a judge to try cases, to a minister to make rules, or a county council to make by-laws? (Hart 1961, p. 26)

Thus they [the second-order rules] may all be said to be on a different level from the primary rules, for they are all *about* such rules; in the sense that while primary rules are concerned with the actions that individuals must or must not do, these secondary rules are all concerned with the primary rules themselves. They specify the ways in which the primary rules may be conclusively ascertained, introduced, eliminated, varied, and the fact of their violation conclusively determined. (Hart 1961, p. 94)

Putting Hart's distinction to use, we can now say that the permissive rule here in question is a second-order one. Among Kant commentators, a similar reading of this permissive rule has been offered by Joachim Hruschka. Although he does not liken it to Hart's second-order rules, it does seem that he would be sympathetic to such a comparison given what he says:

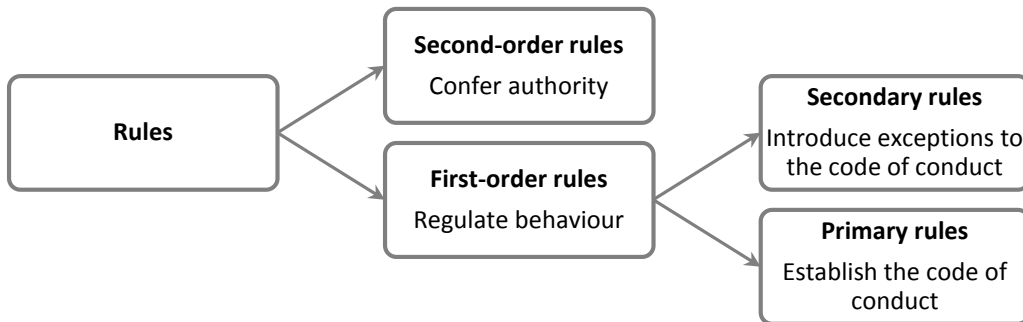
[T]he permissive law of practical reason is a power conferring norm. It introduces and establishes legal institutions. In turn these legal institutions provide the foundation for rights to objects of human choice, such as the right to own property, the right to enforce contractual relations, and the right to exercise parental power. (Hruschka 2003, p. 47)

[T]he postulate permits me to speak of 'my' wife, 'my' child, 'my' servant. Stated differently, the postulate qua permissive law makes me something I otherwise would not be, namely a possible owner of property, a possible promisee with respect to some promisor under a contract, a possible husband or wife, a possible father or mother, a possible head of a household [...] All of these legal institutions – property, contractual claims, marriage, parental power – regardless of their differences, are created by this one postulate, this one permissive law of practical reason. (Hruschka 2003, p. 63-64)

One can say that the permissive law as a power conferring norm provides us with the *possibility* of establishing a legal order on this earth. (Hruschka 2003, p. 66)

Admittedly, given this interpretation of the passage, the permissive rule in question does not occupy a subordinate status. Indeed, its function is not to introduce exceptions to a code of conduct, but to confer authority. Yet, even though it is not a secondary rule, it is not a primary one either. This is because both the terms primary and secondary, as defined in this remark and the previous one, do not *apply* to rules that confer authority. Indeed, the primary-secondary distinction only arises *within* Hart's category of first-order rules. It is only within this category that the following two subcategories

exist: rules that establish a code of conduct and rules that make exceptions to the code. The diagram below clarifies these relationships.



Therefore, since the permissive rule in question is in a different category altogether, the following can be safely asserted: In Kant's legal philosophy, permissive rules are always secondary *when* regulating human behavior is the object of concern.

Is it now therefore safe to conclude that Kant *is committed* (even if implicitly) to a PBP? Of the three types of systems discussed in the previous remark – restrictive, permissive, and incomplete – only the second is ruled out by the textual evidence presented thus far. Since the evidence shows that permissive rules are secondary, the system in which they occupy a primary position – a permissive system – is ruled out. Furthermore, the system in which they occupy a secondary position – a restrictive system – is clearly *not* ruled out. However, what might not be immediately apparent is that an incomplete system *remains* a viable option. Indeed, nothing about the fact that permissions are secondary precludes the following arrangement:

- Restrictive rules are the primary rules of the system.
- Permissive rules are the secondary rules of the system.
- The system does not include a background principle – whether a PBP or otherwise.

Thus, the evidence from Kant's legal philosophy *supports* the thesis that Kant assumes a PBP, by ruling out one of the system's alternatives. However, it does not *vindicate* it entirely, since it leaves one

alternative on the table. Therefore, additional textual evidence is needed in order to definitively show that Kant adopts a PBP.

Fortunately, Kant supplies the needed evidence in his moral writings. Indeed, in one key passage, Kant *implies* the existence of a PBP. In another key passage, Kant *presupposes* its existence. Both of these passages are found in the *Metaphysics of Morals*. Here is the first:

An action that is neither commanded nor prohibited is merely *permitted*, since there is no law limiting one's freedom (one's authorization) with regard to it and so too no duty. Such an action is called morally indifferent (*indifferens, adiaphoron, res merae facultatis*). The question can be raised whether there are such actions and, if there are, whether there must be permissive laws (*lex permissiva*), in addition to laws that command and prohibit (*lex praeceptiva, lex mandati* and *lex prohibitiva, lex vetiti*), in order to account for someone's being free to do or not to do something as he pleases. If so, the authorization would not always have to do with an indifferent action (*adiaphoron*); for, considering the action in terms of moral laws, no special law would be required for it. (MM 6:223)

In the above passage, Kant starts by making clear that by a morally indifferent action he means a merely permitted one. The two are equated. Therefore, whatever Kant goes on to say about the first is automatically said about the second, and vice versa. Next, Kant poses the following question: Can there be morally indifferent actions and, if so, are specific permissive laws needed in order to account for their status as merely permitted? This is the very question that we are interested in. Kant answers it in the negative, in the last sentence of the passage. He says that for an action to be permitted no special permissive law is needed: "no special law would be required for it". He does not deny that permissive laws may exist, but opposes the idea that when "considering the action in terms of moral laws" there needs to be permissive laws, included amongst these moral laws, in order for the action to be permitted. How then can actions be permitted *without* the inclusion of specific permissive laws? Although Kant does not explicitly assert the existence a PBP, he obviously assumes it. In other words, he logically implies its existence.

Kant also relies on the existence of a PBP in a passage where he criticizes a person he refers to as "fantastically virtuous":

But that the human being can be called fantastically virtuous who allows *nothing to be morally indifferent (adiaphora)* and strews all his steps with duties, as with mantraps; it is not indifferent to him whether I eat meat or fish, drink beer or wine, supposing that both agree with me. Fantastic virtue is a concern with petty details which were it admitted into the doctrine of virtue, would turn the government of virtue into tyranny. (MM 6:409)

Kant's point is that, as a matter of fact, some actions are morally indifferent. Moreover, since all morally indifferent actions are permitted (there is only potentially a question about whether the reverse is true), Kant basically here asserts that there are morally permitted actions. Kant also cites examples of such actions: eating meat/fish and drinking beer/wine. But by virtue of what are these actions permitted? What makes them so? There are no permissive rules in Kant's moral philosophy that specify that eating meat/fish and drinking beer/wine are permitted actions. Kant's claim that they are must be based on the assumption that a PBB is part of his system, and that it can be invoked in these particular cases.

In sum, although Kant does not explicitly assert a PBP, there is good evidence, especially from his moral philosophy, that he is tacitly committed to a PBP. Furthermore, since Kant *is* committed to a PBP, the lack of priority, found in the privilege claim, entails partial permissibility, as explained in the previous remark.

### III. Drawing the Distinction Considered Once More

We are now ready to examine again the different ways in which Kant draws the perfect-imperfect distinction. Our aim is to uncover any normative implication that might result from the distinction. This work builds on the previous chapter. It was there shown that none of the ways in which the distinction is drawn supports the priority claim; in other words, it was shown that it is *not* the case that a perfect duty *always* overrides an imperfect duty. As explained at the start of this chapter, that finding, though important, does not rule out the possibility that at least *some* of the ways in which the perfect-imperfect distinction is drawn yield *some* normative implication. In this section, the following three claims are established. (1) Depending on the way in which the perfect-imperfect distinction is

drawn, the distinction sometimes yields, and sometimes doesn't yield, a normative implication. (2) When the distinction does yield a normative implication, that normative implication has the following general form: Sometimes perfect duties have priority over imperfect duties and all other times there is no priority one way or the other. In other words, the normative implication, when it exists, corresponds to the privilege claim. (3) Nonetheless, interesting discrepancies exist between some of the normative implications that result from the distinction. In other words, although the normative implications all have the same general form, which is the privilege claim, they are not entirely identical to one another. At the very end of this chapter, whether and how these normative implications can be united into a single coherent normative claim is examined.

*(a) Distinctions that Simply do not Get Started*

Strictly speaking, it is often more correct to say that Kant *tries* to draw the perfect-imperfect distinction in a given way than to say that Kant actually *does* draw it in that way. This is true whenever the way in which the distinction is drawn does not hold up to scrutiny – whenever the distinction is untenable. Indeed, when the distinction does not actually get started, it seems senseless to search for a normative implication that might result from it. In fact, when this is the case, it seems misleading to say that a normative implication has not been found, as though one *could* possibly have been found one. Instead, the following (stronger) claim seems more fitting: A normative implication *cannot* be found.

The below listed distinctions were ruled out as untenable in chapter 3. Therefore, for the aforementioned reason, they will not be further investigated in this chapter. As a reminder, a brief explanation of why they were ruled out is also provided.

- The distinction based on the Universalizability Test
  - One of the two component parts of this test – the test of conceivability – was shown to be flawed. As a result, the test as a whole was rejected as

flawed. Indeed, no meaningful distinction can be drawn based on the difference between a “contradiction in will” and a “contradiction in conception” when the latter notion is itself problematic.

- The distinction based on external coercion, including the consideration of motives
  - No sound argument was found for why some duties ought to be legal duties whereas others ought to remain extra-legal. The distinction does not get started.
- The distinction based on correlated rights
  - The distinction suffers from an inconsistency in Kant’s conception of what a “right” consists of, in addition to suffering from the same problem that Kant’s distinction based on external enforceability suffers from, stated above.
- The distinction based on whether the duties are positive or negative
  - Some duties, such as the duties of beneficence and respect, do not allow for an *a priori* categorization as either positive or negative. Even personal preferences and cultural factors can contribute to determining whether the duties command the commission or the omission of actions. Since it is not possible to theoretically categorize some duties (which is different from categorizing actions or commands) into those of commission and those of omission, the distinction does not get started.
- The distinction based on maxims and actions
  - The distinction between duties that regulate maxims and duties that regulate actions does not get started since maxims can refer, and often do refer, to actions. The distinction collapses.

In addition to the above enumerated distinctions, the preservation-furtherance distinction and the mandatory-supererogatory distinction were also rejected as untenable in chapter 3. However, because the problems with these two distinctions seem less severe than those with the ones listed above, they are discussed again in this chapter for purposes of comprehensiveness of treatment. Indeed, the problem with the mandatory-supererogatory distinction is that no argument was found that succeeds at getting it started. Yet, unlike the distinction based on coercion, there was one argument that was quite good, even if it was ultimately found unconvincing. Therefore, the mandatory-supererogatory distinction is considered once more with the assumption that that argument does in fact work.

As for the preservation-furtherance distinction, the problem with it is that some imperfect duties in some situations allow for the preservation rather than the furtherance of humanity. Nonetheless, this distinction remains to some extent workable since those situations where this does occur are of a certain recognizable type: They are situations where need or distress is an issue, whether directly (i.e. someone is in need or distress in the present situation) or indirectly (i.e. an act in the present situation could help someone if they were to find themselves in need or distress in the future). Furthermore, we antecedently know the effect that need or distress will have: If need or distress is an issue then the imperfect duty might allow for the preservation of humanity instead of allowing for its furtherance, which is what the case is otherwise. This is in contrast to the positive-negative distinction where there is little ability to antecedently predict or control how cultural norms and personal preferences will determine the classification of some duties as either positive or negative.

*(b) Actions and Ends*

This is one of the ways in which Kant draws the perfect-imperfect distinction and that, contrary to the ways listed above, was found tenable. According to this distinction, perfect duties regulate actions whereas imperfect duties specify ends. However, as discussed in chapter 4, this way in which

the distinction is drawn does not yield a normative implication. In other words, it is normatively neutral. As previously explained, this is because when a conflict occurs between two duties, it does not seem to follow from the mere fact, that one of the duties regulates an action whereas the other prescribes an end, that the former trumps the latter. Indeed, in order to determine which of the two duties has priority, more substantive information about the duties seems needed than is contained in the distinction itself. In particular, what is the action that one of the two duties regulates and what is the end that the other prescribes?

*(c) Latitude in Execution*

In section II of chapter 3, it was shown that Kant's distinction between duties based on latitude needs to be sharpened, factoring in several possible objections, if it is to be plausible. To begin with, numerous problems were exposed with the simple and general claim that imperfect duties allow for latitude whereas perfect duties do not. It was argued that *all* duties allow for *some* latitude. Moreover, it was argued that recasting the distinction in terms of degrees – as a matter of *how much* latitude a duty allows for – is not a convincing solution for salvaging the distinction. A different and more sophisticated solution, proposed by Thomas Hill, was then examined in detail.

In a nutshell, according to Hill, all duties allow for latitude in the first two of the following three senses listed below, but only imperfect duties allow for latitude in the third sense. Therefore, according to Hill, a meaningful distinction between duties can be drawn based on latitude if the third sense is the one used for drawing the distinction.

- (1) There is room for judging whether the duty applies to a particular situation (i.e. for judging whether it is even possible to either violate or fulfil the duty in a particular situation).
- (2) There is room for choosing between different ways of satisfying the duty once it has been judged that the duty is in fact relevant to the particular situation.

(3) We are free “to choose to do x or not on a given occasion, as one pleases, even though one knows that x is the sort of act that falls under the principle [i.e. the duty], provided that one is ready to perform acts of that sort on some other occasions” (Hill 1971, p. 61).

However, it was previously argued that a problem exists with Hill’s solution. In particular, a problem arises with drawing the distinction based on (3) in the case of the duty to help others *in situations that involve need or distress*. Indeed, in such situations, (3) no longer works as a criterion for differentiating between perfect and imperfect duties. This is because it seems that one *must* help someone who is in distress – one must act in accordance with the imperfect duty of beneficence in this case. Only in rare and unusual circumstances of the following sort can one choose to do otherwise if there is a person in distress (these constitute exceptions to the exception): (a) the person in distress is already being helped as much as can be by someone else, or (b) one is already devoting all of one’s resources to helping someone else who is also in distress. In other words, it does *not* seem that the *reason* one can provide for not helping someone who is in distress is that one will perform some other act of beneficence in the future – which is what (3) erroneously allows for.

The above objection to Hill’s solution does not only rely on an appeal to intuitions. Kant seems to essentially agree with it, even if he may not say as much as one would hope on the subject. At one point, Kant asserts that whether and how much I should help is “reserved to the measure of my needs, my resources, and the other’s distress” (VE.V 27:536, emphasis added; see also MS 6:393). He also makes clear that he believes that there is a constitutive connection between the general imperfect duty of beneficence, on the one hand, and considerations pertaining to situations of distress, on the other. Indeed, in both the *Groundwork* and the *Metaphysics of Morals*, he justifies the very existence of the imperfect duty of beneficence by invoking the idea that we would want to be helped were we to find ourselves *in need*. In the *Groundwork*, he says that one would not will to live in a world devoid

of beneficence because “many cases could occur in which one would need the love and sympathy of others” (G 4:423). Likewise, in the *Metaphysics of Morals*, he asserts the following:

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. For everyone who finds himself in need wishes to be helped by others. But if he lets his maxim of being unwilling to assist others in turn when they are in need become public, that is, makes this a universal permissive law, then everyone would likewise deny him assistance when he himself is in need, or at least authorized to deny it. (MM 6:453)

Given the above, situations of distress certainly should not be treated separately from the general duty of beneficence: There is no special duty of beneficence owed to people in distress which is distinct from the general duty of beneficence owed to others. Any plausible account of imperfect duties must be able to explain what one ought to do in situations of distress. For this reason, an amended version of (3) was offered as an alternative criterion for drawing the perfect-imperfect distinction:

(3\*) *Sometimes* (i.e. on some occasions), we are free to choose to do x or not as one pleases “even though one knows that x is the sort of act that falls under the principle, provided that one is ready to perform acts of that sort on some other occasions” (Hill 1971, p. 61).

The key difference between (3) and (3\*) is the clause that is introduced at the start of (3\*): “*Sometimes* (i.e. on some occasions)”. Indeed, according to (3\*), the right to choose not to help others is contingent: it *depends* on whether or not there is a person in need or distress.

With (3\*) as the criterion for drawing the distinction between perfect and imperfect duties, an imperfect duty *sometimes* – namely in situations of need or distress – operates like a perfect duty. To explain this point, consider the perfect duty not to lie. According to this duty, it is *not* the case that we are sometimes permitted to lie if we tell the truth on other occasions; honesty in the future is *not* a good excuse for dishonesty in the present. According to (3\*), this feature or characteristic which is *always* true of perfect duties – acting in conformity with the duty today is *not* optional even if one acts in conformity with it tomorrow – is *sometimes* true of imperfect duties. Indeed, according to (3\*), when

there is a person in need or distress, helping in the future is *not* a good excuse for failing to help in the present.

Let us now examine the example of the murderer at the door in light of (3\*), and see what results this method of drawing the distinction might yield. The following seems to be the key question: Can acting in conformity with the imperfect duty in this situation be morally “replaced” with acting in conformity with it in the future? It very much seems that the answer is “no”. Indeed, it very much seems that a situation where an individual’s life is on the line, as in the case of the murderer at the door, *does* count as one of “need” or “distress”. Therefore, according to (3\*), failing to help on this occasion *cannot* be substituted with future acts of beneficence. This is one of those times when the imperfect duty *does* operate just like a perfect duty. Of course, the duty of beneficence is still an imperfect one when there is a murderer at the door – it operates *like* a perfect duty. This is because in ordinary situations not involving need or distress the duty allows one to choose whether to act in conformity with it or not as long as one pledges to act in conformity with the duty in the future. This is unlike a perfect duty which always forbids one to fail to act in conformity with it. Still, in the situation of the murderer at the door, it is false to assign the imperfect duty less weight than a perfect duty. This is because, whenever a situation involves need or distress, an imperfect duty is as inflexible in its demands as a perfect duty, and so the weight assigned to the two duties must be equal.

Abstracting from the case of the murderer at the door, the following is the general normative implication that results from the distinction based on latitude: A perfect duty has priority over an imperfect duty in ordinary situations, but in some situations – namely those involving need or distress – there is no priority one way or the other.

*(d) Admit of Exceptions*

In section III of chapter 3, the following distinction was elucidated: Imperfect duties admit exceptions whereas perfect duties do not. It was explained that although one can make an exception

to performing an action that is in conformity with an imperfect duty, one can do so *only if* it is in order to perform another action that is also in conformity with a duty, whether perfect or imperfect. In other words, an exception cannot be made for the sake of an inclination. Given how the distinction is drawn, any normative claim that contains the idea that an imperfect duty *sometimes* or *always* overrides a perfect duty is ruled out. Therefore, from the list of theoretically possible normative implications, presented in the clarifying remarks section of this chapter, and letter-labeled “A” through “G”, only the following three remain viable options:

“A”: In situations of conflict between duties, it is always the case that a perfect duty overrides an imperfect duty. (This is the priority claim.)

“C”: In situations of conflict between duties, it is always the case that there is a lack of perfect-imperfect priority.

“E”: In situations of conflict between duties, it is sometimes the case that a perfect duty overrides an imperfect duty and all other times there is a lack of perfect-imperfect priority. (This is the privilege claim.)

Moreover, in section V of chapter 4, it was shown that the priority claim is *not* supported by the distinction based on exceptions; in other words, claim “A” was ruled out. Admittedly, it was observed that it is unclear whether the distinction drawn based on exceptions should be taken as (1) a license to *always* give priority to a perfect duty over an imperfect duty, or (2) a license to only *sometimes* give priority to a perfect duty over an imperfect duty. Nonetheless, since both claims (1) and (2) are different from the priority claim, which says that one *must* and not merely that one *can* prioritize a perfect duty over an imperfect duty, the priority claim was safely ruled out at that point.

This leaves us with “C” and “E” as the only two surviving possible normative implications. What are we to make of this fact? “E” is the privilege claim. But what is “C”? “C” can be understood as an extension or continuation of the privilege claim. Indeed, “E” encompasses the full range of cases where

there is sometimes, though not always, a lack of priority – from the lack of priority occurring only once to it occurring all times except for once. “C” just goes one step further and picks out the remaining possibility where there is a lack of priority without any exception. In other words, with “C” and “E” left as the remaining options, the result of the distinction based on exceptions is basically the privilege claim, with some ambiguity or lack of determinacy at the boundary as to whether or not a perfect duty can override an imperfect duty.

Although we have managed to zero-in on “C” and “E” from the long list of possible normative implications, we disappointingly know little, as a result, about what to do in particular cases of conflict, such as when there is a murderer at the door. If a perfect duty and an imperfect duty are always of equal weight (i.e. if “E” is true) then we know that we are permitted to choose between (a) helping the fugitive and lying to the murderer and (b) telling the truth to the murderer and failing to help the fugitive. But, in all other possible arrangements – whenever it is sometimes, and only sometimes, the case that a perfect duty has priority over an imperfect duty – we know considerably less. We know that we are not *required* to lie to the murderer, but that is about it. In particular, we do not know whether we are *forbidden* to lie to the murderer or *permitted* to lie. Nothing in how the distinction is drawn allows us to determine whether this particular case of conflict, or any other case, is one where the duties are equal in weight or one where the perfect duty outweighs the imperfect duty.

In conclusion, the normative implication of the distinction based on exceptions is basically the privilege claim. However, unfortunately, not enough is said for this result to be of great use as a decision procedure for action. Indeed, unlike the distinction based on latitude (and also, as we shall see, unlike the other ways in which the distinction is drawn that yield a normative implication) we do not in this case know *when* the duties are equal in weight and *when* they are not.

(e) *Supererogatory action*

In section VI of chapter 3, it was shown that the distinction based on supererogatory action is untenable. Flaws were exposed in each of the four textually-based arguments for the conclusion that actions in conformity with imperfect duties are supererogatory. It was argued that any action in conformity with any duty is mandatory, not supererogatory, and so it is not possible to differentiate between duties based on whether actions in conformity with them are mandatory or supererogatory. Nonetheless, even though ultimately flawed, the second argument seemed more plausible than the rest. According to this argument, performing actions of a given type is supererogatory *if and only if* the actions are performed *beyond* the number that is required by an imperfect duty. Thus, for purposes of comprehensiveness of treatment, it seems worthwhile to here investigate whether any normative implication results from this specific way of drawing the distinction based on supererogation.

To begin with, drawing the perfect-imperfect distinction in this way does not support the priority claim, as already discussed in section V of chapter 4. This is because the priority claim says that perfect duties *always* override imperfect duties whereas, according to this second argument, perfect duties *only sometimes* override imperfect duties. In particular, they override them *only when* one has already crossed the threshold where actions in conformity with an imperfect duty go from mandatory to supererogatory. In order to now determine whether *any* normative implication exists whatsoever, the second argument deserves further consideration. In particular, the following two questions are key to determining the moral weight of a duty in light of the distinction currently under scrutiny:

- Is it *right* if an action in conformity with the duty is performed?
- Is it *wrong* if an action in conformity with the duty is *not* performed?

For each and every duty, the answer to the first of the above two question is always “yes”. Therefore, the second question is really the one that matters. In the case of perfect duties, the answer to the second question is also always “yes”. But, in the case of imperfect duties, the answer to the

second question *depends* on whether or not the agent has performed enough actions in the past in conformity with the duty. If the agent has *not* performed enough such actions, then the answer is “yes” – just like for perfect duties. But, if the agent has performed enough such actions, then the answer is “no” – unlike in the case of perfect duties. Basically, if not enough actions in conformity with an imperfect duty have been performed then this duty operates *just like* a perfect duty but, if enough actions have been performed, then it no longer does.

Furthermore, since the weight that a duty is assigned corresponds to its moral importance, other things being equal, perfect duties deserve greater weight than imperfect duties *when* the agent has crossed the imperfect duty threshold. By contrast, they deserve the same weight *when* the agent has not yet crossed this threshold. Indeed, as briefly mentioned in section V of chapter 4, the trade-off works out in favor of complying with perfect duties when one has performed enough actions in conformity with imperfect duties: One right and no wrong is better than one right and one wrong. However, the trade-off does *not* work out in favor of any of the two duties more so than the other when one has not yet performed enough such actions: One right and one wrong is the outcome in both cases.

In light of the above, the normative implication of the distinction is the privilege claim: In some situations (situations of type  $\alpha$ ) a perfect duty has priority over an imperfect duty, but in all other situations (situations of type  $\beta$ ) there is no priority one way or the other. In other words, the normative implication of the distinction based on supererogation has the same general form as the one based on latitude. Nonetheless, the details are not the same: It is not always the *same* particular situations that fall under each of the two *categories* or *types* of situations,  $\alpha$  and  $\beta$ . Indeed, the criterion for determining whether a particular situation is of type  $\alpha$ , where perfect duties have priority, or of type  $\beta$ , where there is no priority one way or the other, varies with how the distinction is drawn. In the case of the distinction based on latitude, as previously discussed, the criterion is sensitive to facts about the

situation at hand, and the key question is whether the situation involves need or distress. By contrast, in the case of the distinction based on supererogation, sorting a particular situation into one of the two categories does not depend on facts about the given situation. Instead, the criterion is sensitive to one's past actions and the key question is whether, and how much, one has previously acted in conformity with the imperfect duty under consideration.

To illustrate the above discrepancy, consider again the case of the murderer at the door. The distinction based on latitude yields the following verdict: I am *always* permitted (though never required) to help the fugitive by lying to the murderer. However, the distinction based on supererogation yields the following verdict: I am *only sometimes* permitted (though also never required) to help the fugitive by lying to the murderer; whether or not I am permitted *depends* on whether or not I have helped enough people in the past. If I have helped enough people in the past, then I am required *not* to lie to the murderer (different result than the one of the distinction based on latitude). By contrast, if I have not helped enough people, then I am permitted to lie to the murderer (same result as the one of the distinction based on latitude).

To further highlight the difference between the two normative implications, consider another situation where one would also be helping someone by lying to a third party, but where the assistance that one would be providing them is far less than that of saving their life. For instance, suppose that I am able to liberate my co-worker from an hour of work that is demanding, though in no way life-threatening, by lying to my employer. In this case, the distinction based on latitude yields the following negative verdict: Since the situation does not involve need or distress, I am categorically *not* permitted to lie to my employer. By contrast, the distinction based on supererogation still yields a contingent verdict: I *might* be permitted to lie to my employer. Indeed, just like in the case of the murderer, whether or not I am permitted to lie *depends* on whether or not I have helped enough people in the past.

Abstracting from the above two examples, the following are the two general differences between the two normative implications:

- A difference in facts about the situation at hand can change the verdict of the distinction based on latitude but not the verdict of the distinction based on supererogation.
- A difference in the agent's past actions can change the verdict of the distinction based on supererogation but not the verdict of the distinction based on latitude.

In conclusion, whether or not the distinction based on supererogation yields any normative implication hinges on whether the second argument for drawing the distinction is accepted. If it is, then the normative implication of the distinction is the privilege claim. Nonetheless, discrepancies exist between the normative implication of this distinction and the one based on latitude.

*(f) Preservation and Furtherance of Humanity*

In section VIII of chapter 3, it was argued that the following way in which Kant draws the perfect-imperfect distinction is problematic: Perfect duties contribute to the preservation of humanity whereas imperfect duties contribute to its furtherance. Indeed, it was pointed out that although acting in conformity with an imperfect duty can sometimes advance the well-being of humanity, doing so can also sometimes serve to maintain its very existence. For example, in the case of the imperfect duty of beneficence, it was pointed out that saving the life of other people does not primarily help them to exercise their rational nature (furtherance of humanity) but does safeguard the very existence of their rational nature (preservation of humanity). Likewise, in the case of the imperfect duty of self-perfection, it was pointed out that the act of acquiring self-defence skills is more correctly categorized as one of safeguarding the being of humanity than one of furthering its well-being.

We can accept Kant's thesis that the furtherance of humanity is less important than its preservation. After all, well-being does presuppose being. The priority claim was not rejected in the previous chapter on the grounds that Kant is mistaken about the priority relationship that holds

between the two ideas of preservation and furtherance. Instead, the priority claim was rejected because preservation and furtherance do not perfectly match onto the two categories of perfect and imperfect duties respectively. Indeed, sometimes either acting in conformity with an imperfect duty or acting in conformity with a perfect duty contributes to the preservation of humanity. For instance, in the murderer at the door example, the moral conflict is *internal* to the consideration of the preservation of humanity. On the one hand, if one does not lie to the murderer, then one is failing to save the existence of a human, the fugitive, who is a rational being. On the other hand, if one does lie to the murderer, then one is hijacking a rational being, the murderer, reducing him to a mere means at the service of one's own ends. Thus, the following is the normative implication that results from the preservation-furtherance distinction: When an imperfect duty serves to further humanity then a perfect duty overrides an imperfect duty, but when an imperfect duty serves to safeguard humanity, just like a perfect duty, there is no priority one way or the other. In other words, the normative implication of the distinction is the privilege claim.

But how does this normative implication compare to those of the distinctions based on latitude and supererogation? In particular, are there discrepancies despite the general uniformity in form? To begin with, the normative implication of this distinction is *closer* to the one based on latitude than to the one based on supererogation. This is because, like the first and unlike the second, what is relevant to determining whether or not a perfect duty trumps an imperfect duty is the *present* situation, and not the *past* actions of the agent. Furthermore, both in the case of this distinction and in the case of the distinction based on latitude, if need or distress is a fact about the situation at hand then there is a lack of perfect-imperfect priority.

Yet, there is still a difference between the normative implications of these two distinctions. Although the normative implication of the distinction based on latitude does not depend on the past, it *is* time-sensitive. According to this distinction, determining whether or not a perfect duty has priority

over an imperfect duty requires asking whether the *present* act that is in conformity with an imperfect duty can be replaced with a *future* act that is also in conformity with the imperfect duty. The perfect duty has priority over the imperfect duty if and only if the present act can be replaced with a future act. Conversely, the normative implication of the distinction based on the preservation-furtherance of humanity is *not* time-sensitive: It neither depends on the past nor on the future. It only depends on facts pertaining to the present situation. To see how these two normative implications can diverge as a result, consider the following two hypothetical situations:

- I can either save someone's life today or save someone's life tomorrow, but cannot save both. Furthermore, I will need to lie if I am to save someone's life today whereas I can save someone's life tomorrow without lying.
- I can help someone today with a task that is important to them but not a matter of need (i.e. the person is not in distress). However, in order to do so, I will need to lie. Furthermore, this is the last opportunity that I will ever have to help someone – suppose, for instance, that I am on my death bed.

In the first situation, the preservation-furtherance distinction yields a lack of perfect-imperfect priority. This is because acting today in conformity with either duty contributes to preserving humanity, and the future calculus is irrelevant given that the distinction is not time-sensitive. By contrast, the distinction based on latitude yields that, in the present, the perfect duty not to lie has priority over the imperfect duty to help others. Indeed, not helping today is perfectly replaceable with helping tomorrow – the act of helping is the same, and I cannot perform both acts. Moreover, by helping tomorrow, I can live up to my duty not to lie both today and tomorrow.

In the second situation, the verdicts of the two distinctions are reversed. The preservation-furtherance distinction yields that the perfect duty not to lie has priority over the imperfect duty to help others. This is because helping, in this case, is not an act of preserving humanity. By contrast, the

distinction based on latitude does not yield a lack of perfect-imperfect priority. Indeed, even though I would not be helping with a matter of need if I were to lie, helping today is not exchangeable with helping in the future because this is my last chance to ever help, and so the distinction does not indicate that one should forgo helping today.

In conclusion, the preservation-furtherance distinction yields the following normative implication: When an imperfect duty serves to further humanity, then a perfect duty overrides an imperfect duty, but when an imperfect duty serves to safeguard humanity, there is no priority one way or the other. Although the normative implication of the distinction has the general form of the privilege claim, there are discrepancies between it and the implications of the distinctions based on supererogation and latitude.

#### IV. Conclusion

Now that we have gone through the many ways in which Kant draws the perfect-imperfect distinction, and identified the normative implications that result from each of them (if and when a normative implication does in fact result), we are in a position to step back and draw a broader conclusion. In particular, the preceding analysis leaves us with the following question: What exactly are the consequences of having a variety of distinctions with differing normative implications? This question can be broken down into two main parts. On the one hand, does the multiplicity of normative implications pose a theoretical problem for Kant (i.e. a problem of consistency)? In which case, wasn't it misleading to present this chapter as "positive" and "constructive" in nature, in comparison to the previous chapter which was described as "negative" and "critical"? Indeed, isn't an inconsistency in normative implications at least as bad as the counter-intuitive result of the priority claim? On the other hand, does the plurality of normative implications pose a practical problem for agents who are committed to Kant's moral philosophy in their everyday lives (i.e. a problem of execution)? Indeed, how is one supposed to work out how to act in situations of conflict when the different ways in which

the distinction is drawn do, or at the least might, yield different outcomes?

Let us first address the theoretical worry. Even though the different ways in which the perfect-imperfect distinction is drawn are not compatible (i.e. there is not a complete overlap among them), the normative implications that result from them *are* compatible. Indeed, all of the normative implications have the same general form, which is the privilege claim. The fact that the privilege claim is the common form to all of the resulting normative implications is significant; it means that any given normative implication will yield one of the following two directives in a situation of perfect-imperfect conflict, and no other:

- One must act in conformity with the perfect duty.
- One is free to choose to act in conformity with either the perfect duty or the imperfect duty.

Given the above, a discrepancy between the normative implications, if and when it exists, can only take on the following form: One normative implication yields that one must act in conformity with the perfect duty whereas the other yields that one is free to choose to act in conformity with either of the two duties. It is easy to notice from this fact that the directives, even though there is a difference between them, can both be satisfied. Indeed, the first directive is a requirement whereas the second is a permission. By acting in conformity with the requirement one is satisfying it and one is, *ipso facto*, satisfying the permission.

Since the different normative implications are compatible, they can form a single coherent normative claim. This overarching normative claim, like each of the individual normative implications resulting from the perfect-imperfect distinction, also has the general form of the privilege claim. Indeed, it either requires one to act in conformity with a perfect duty (if one or more of the subsidiary claims requires this) or it allows one to choose to act in conformity with either a perfect duty or an imperfect duty (if all of the claims resulting from the distinction allow one to choose). Indeed, the

difference between the overarching normative claim and each of the individual normative claims is *not* in its general form. Instead, the difference lies in the fact that the overarching claim is more “restricted” than any of its constituent parts. In other words, it is more often true in the case of the overarching claim than it is in the case of any of its constituent parts that a perfect duty overrides an imperfect duty. This is because it suffices that one of the individual claims resulting from the perfect-imperfect distinction requires conformity with the perfect duty for the overarching claim to require this. As a result, the overarching normative claim could be described as “closer” to the priority claim than any of the individual normative claims, since it more often than they requires one to act in conformity with the perfect duty. However, this does not mean that the overarching normative claim is “closer” to the priority claim than it is to any of its constituent parts. The important categorical difference remains between the priority claim, on the one hand, and the normative implications actually resulting from the perfect-imperfect distinction and the overarching claim that they can come to form: All of the latter, unlike the priority claim, allow one to sometimes not act in conformity with a perfect duty for the sake of acting in conformity with an imperfect duty.

Having resolved the theoretical worry, let us now tackle the practical problem. Applying the overarching normative claim is not nearly as daunting as it might at first seem. Indeed, although the existence of several constituent normative claims might seem cumbersome, this is not necessarily so. It is enough to see that one constituent normative claim requires one to act in conformity with the perfect duty to know that one must act in this way. The process of moral deliberation basically consists in going through the constituent normative implications to see what they yield, but with *stopping* as soon as one of the distinctions yields the verdict that one must act in conformity with the perfect duty.

To see how this might actually take place in practice, let us return to the example with which the thesis started and that has been a source of preoccupation throughout: the murderer at the door example. What does the perfect-imperfect distinction, properly understood, say that one should do in

this situation? The following are the relevant questions:

- What is the verdict of the distinction based on the preservation-furtherance of humanity?
  - In other words, would helping the fugitive be an act of preserving humanity?
- What is the verdict of the distinction based on latitude?
  - In other words, is helping the fugitive substitutable with a future act of beneficence?
- What is the verdict of the distinction based on supererogation?
  - In other words, has one helped enough people in the past, such that it is not permitted for one to help the fugitive because doing so involves lying?

Only the first of the above three questions can be answered with certainty without further empirical information. Saving a human life is an act of preserving humanity, and so the preservation-furtherance consideration yields a lack of perfect-imperfect priority. This result does not put an end to the process of moral deliberation, however, since we must go through all of the normative implications unless and until one of them yields the result that one must act in conformity with the perfect duty. The answer to the second question is very likely to be that one cannot substitute helping the fugitive for helping someone else in the future – in which case there is a lack of perfect-imperfect priority. Still, it is possible to conceive of cases where the answer might be different, such as when one can either save the fugitive or a person else in the future, but not both, and so where the present act of helping someone would be substitutable for a future act. Further empirical information is needed to give a more definitive answer to the second question. As for the third question, the answer is directly dependent on what the individual has done in the past, and so it clearly cannot be answered from the armchair. The fact that this analysis has not definitely resolved what one should do in the murderer at the door situation is not particularly problematic. The overarching normative claim can be quite easily applied, as here shown, and the only limitation is a lack of empirical evidence for it to be here fully applied.

Some practical problems do admittedly exist. In the case of the above three ways in which the distinction is drawn, there is sometimes room for debate, due to the vagueness of some of the terms used in drawing the distinction, about where cases that are at the margin actually fall. For instance, does helping someone acquire self-defence skills contribute to preserving humanity rather than to furthering it? It has been argued in this thesis that it does, but it would not be unreasonable for someone to argue the opposite. Also, just how many past acts of beneficence is enough for the imperfect duty to help someone to no longer presently be in force? Similarly, how similar do two acts of beneficence have to be to one another in order for them to be substitutable for one another? However, it is important not to exaggerate the significance of these problems. It is quite unlikely that the majority of cases will be ones that are at the margin. Also, the problem of vagueness and applying rules at the margin is not unique to Kant's system of duties, but common to moral and legal systems. Even though it does seem that Kant could have sometimes been more careful and precise in choosing his terms, it is unlikely that the problem would have disappeared as a result.

A perhaps more serious problem exists in the case of the distinction based on exceptions. As discussed, we do not in the case of this distinction know *when* the duties are equal in weight and *when* they are not (i.e. when the perfect duty has priority and when it does not). This fact does not raise a theoretical problem, however, since the normative implication has the general form of the privilege claim and so is compatible with the other normative implications. If it is a problem at all, it is a practical one. It is *not* a practical problem whenever one of the ways in which the distinction is drawn yields that a perfect duty overrides an imperfect duty. In such a case, it does not matter what the distinction based on exceptions yields. It is potentially a practical problem when all of the other distinctions yield a lack of priority. The distinction based on exceptions might require that a perfect duty override an imperfect duty and it might not. We have no way of figuring out and so there is a deficiency with this way of drawing the distinction: it is not drawn in a way that can be applied in practice and so we cannot really

put it to use.

Thus, although progress has hopefully been made here, questions remain. Beyond the specific ones discussed above, there are more general questions that relate to this thesis. For instance, how are conflicts between two perfect duties or two imperfect duties to be resolved? What about conflicts between duties held by two different agents rather than by the same agent? Or what about conflicts between entities that are not individuals or agents, such as associations, companies, or countries? These questions attest to the fact that this thesis is only a piece of a larger puzzle. While there is much work to be done, I hope to have made at least a modest contribution to clarifying and evaluating an important distinction of which Kant and philosophers make repeated use, a distinction that remains in use till this day.

## **Bibliography**

### I. Abbreviations & Citation Method for Historical Works

References to Kant's work cite the volume and the page number in the Royal Prussian Academy of Sciences edition. In the case of Kant's notes in his copy of the textbook by Alexander Gottlieb Baumgarten, *Initia philosophiae primae*, the page number in the textbook is also mentioned following the abbreviation Pr.

- The titles of the works by Kant that are cited are abbreviated as follows.

G                                    *Grundlegung zur Metaphysik der Sitten*  
   *Groundwork of the Metaphysics of Morals*

KpV                                   *Kritik der praktischen Vernunft*  
   *Critique of Practical Reason*

KU                                    *Kritik der Urteilskraft*  
   *Critique of Judgment*

MS                                    *Metaphysik der Sitten*  
   *Metaphysics of Morals*

N                                    Kant's notes in his copy of the textbook by Alexander Gottlieb Baumgarten,  
*Initia philosophiae primae* (Pr and the page number then follow, as indicated  
above)

TPP                                   *Zum ewigen Frieden*  
   *Toward Perpetual Peace*

VE.M                                *Vorlesungen über Ethik*  
   *Lectures on Ethics*  
   Written by Mrongovius

VE.V                                *Vorlesungen über Ethik*  
   *Lectures on Ethics*  
   Written by Vigilantius

VRL                            *Über ein vermeintliches Recht, aus Menschenliebe zu lügen*  
                                      *On a Supposed Right to Lie from Philanthropy*

- The title of the work by Grotius that is cited is abbreviated as follows.

RWP                            *De jure belli ac pacis*  
                                      *Rights of War and Peace*

- The titles of the works by Pufendorf that are cited are abbreviated as follows.

EUJ                            *Elementorum jurisprudentiae universalis*  
                                      *Elements of Universal Jurisprudence*

DMC                            *De officio hominis et civis*  
                                      *On the Duty of Man and Citizen*

LNN                            *De jure naturae et gentium*  
                                      *On the Law of Nature and of Nations*

- The titles of the works by Wolff that are cited are abbreviated as follows.

Discourse                    *Discursus Praeliminaris de Philosophia in Genere*  
                                      *Preliminary Discourse on Philosophy in General*

Ethics                            *Philosophia moralis sive ethica*  
                                      *Ethics*

Letter to Leibniz            *From Philosophical Papers and Letters of Leibniz, edited by Leroy Loemker*

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