

SUPEREROGATION,
IMPERFECT DUTY
AND
THE STRUCTURE
OF MORAL ACTION

Ph.D. Thesis
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Over-accuracy in {ethics} is a mark of meanness.

Aristotle

How slight a thing it is to be a good man according to the law!
How much more broadly does the rule of duties extend than the rule of law! How many things do piety, humanity, justice, fidelity demand! And yet they are all outside public records.

Seneca

All moral relations of rational beings...can be reduced to *love* and *respect*.

Kant

A declaration of rights would be but a lop-sided job without a *declaration of duties*.

Jeremy Bentham

The practice of virtue excludes not only vice but also a policy of brinkmanship with regard to vice.

Mary Gregor

I think that we properly recognize morality that goes beyond duty; for it seems to me incontestable that properly or improperly we do so.

J.O. Urmson

Political justice needs always to be complemented by other virtues.

John Rawls

There has been a whole shift in mood. People are much more into the mood of helping each other. You have to see that and go with that.

Arnold Schwarzenegger

ABSTRACT

Traditionally, philosophers have recognized three types of moral actions: the obligatory, the permissible and the prohibited. But this classification cannot account for acts of saintliness or heroism - or indeed of any self-denying good actions which are not obligatory to perform. These actions are termed supererogatory: they are more than duty requires and are accompanied by some specific features, notably that they are done in the interests of others than the moral agent and that they involve costs or risks.

If supererogatory acts are accepted as a category of moral action, then the traditional tripartite classification needs to be revised: the categories of obligatory and permissible acts are redistributed in terms of duties, morally neutral actions, offenses, and acts of supererogation. Morally neutral actions are rejected as a separate category of moral value. Duties are divided into those which can be legitimately enforced (perfect duties) and those which cannot be matched by rights (imperfect duties). Justice involves both types of rights and duties.

An account of the full spectrum of moral action recognizes internal and external aspects and justifies the use of aretaic and deontic methods. It includes five types of moral actions: prohibited acts, offenses, perfect duties, imperfect duties and acts of supererogation. This account is relevant to the facts of moral experience. It is compatible with the major theoretical frameworks in ethics, and it is formulable in terms of manageable complexity.

INTRODUCTION

Of the “thousand or more themes that might be pursued under the heading of moral and political philosophy,”¹ this thesis pursues three: supererogation, imperfect duty and the structure of moral action. Supererogation and imperfect duty will be shown to be separate types of moral action. In setting out distinct categories of moral action, I am not proposing a mere theory of taxonomy, but rather a reasonable and serviceable approach to issues of moral disagreement. The possibility exists that issues of universal importance to the human race and which transcend divisions imposed by culture, such as that complex of philosophical problems related to the global environment, which includes issues as diverse as the survival of endangered species to the mass movements of peoples, may well lend themselves to larger measures of agreement than traditional topics in ethics, such as questions of personal morality and the legitimacy of the use of force in dealings amongst men and nations, have historically enjoyed. Some of these traditional types of conflicts have proven highly resistant to resolution by means of argument and it seems natural to assume that a measure of irreconcilability between the main comprehensive moral and political doctrines will persist.²

¹Hampshire, 1989, p. 3. See also Rawls, 1993, p. 135, where political philosophy is viewed as part of moral philosophy.

²“Practising Christians of all kinds, Moslems of all kinds, Orthodox Jews of all kinds, Marxists of all kinds, atheistic liberals of all kinds, atheistic conservatives of all kinds recognize that their conceptions of the good are in some respects incompatible and mutually hostile, and that this must be so, if their conceptions have any specific content.” (Hampshire, p. 77). G.J. Warnock, in his study of J. L. Austin noted that while Austin

But the threshold issues of cosmic importance which have recently made their appearance may, because of their trans-cultural significance, lend themselves to a greater measure of agreement than has been possible in the past.³ The urgencies of global environment issues press with equal force upon all ideologies. These series of interconnected problems affecting the earth's biosphere and grouped loosely under the heading of 'prospects for future generations of life on earth' may lend themselves more easily to reasoned argument, because they are challenged both by a wider respect for the actual moral and political facts of a given set of problems, and with a greater measure of agreement about the methods of negotiation used to resolve such issues, particularly in public debate.

This thesis calls attention to certain moral facts which traditional philosophy has frequently neglected, and presents a method of analysis of moral action which can serve to assist in the complex negotiations on common moral and political responsibility which await this and coming generations. The subject is an appropriate candidate for what J. L. Austin termed "a good site for *field work* in philosophy."⁴

believed the cycle of perpetual wrangling and disputation, never-ending controversy and disagreement, perpetual refutation and counter-refutation was characteristic of philosophy, it was not intrinsic to it. (See Warnock, p. 6-7).

³"A whole set of issues has surfaced that can only be dealt with on a worldwide basis, such as nuclear proliferation, the environment, the population explosion, and economic interdependence." Kissinger, p. 24. *The Human Development Report 1994* published by the United Nations Development Program refers to a silent crisis - "a crisis of underdevelopment, of global poverty, of ever-mounting population pressures, of thoughtless degradation of environment." op cit, p.iii.

⁴Austin, 1961, p. 131. Austin also noted the relevance of a system of classification of actions, "according to the particular selection of breakdowns to which each is liable, {and which} should assign them their places in some family group or groups of actions or in some model of machinery of acting." *ibid*, p. 128. Referring to the "executive" stage in the machinery model of action as the stage "where we *muff* it, he also notes that there are

Our discussion enters the realm of moral codes, of values, and judgements about individual and collective actions which fall within the scope of morality as it is commonly understood. Traditionally, philosophers recognized only three categories of moral value - the obligatory, the prohibited and the permissible or morally neutral. This was the view of Kant, as well as that of most utilitarians, for example, and the distinction held well into the nineteenth century. But almost exactly 100 years ago, the Austrian philosopher Alexius Meinong isolated four categories of moral value. These he termed the meritorious (*das Verdienstliche*), the correct (*das Correct*), the permissible (*das Zulässige*) and the objectionable, or reprehensible (*das Verwerfliche*). He saw a mid-point between the correct and the permissible with good on one side and evil on the other. He also noted that peculiar relations obtained between the categories. They could, for example, be considered as mere artificial indicators on an intrinsically quasi-infinite spectrum of moral values, as points on a line. But they appeared to be arranged in a specific order on either side of what he termed the 'Nullpunkt,' or turning point between good and evil. He also states that the field of application of meritorious and reprehensible actions is much larger than that of the restricted ranges of correct and permissible acts. How can an action be more correct than correct, he asks. This question may be impossible to answer and hence to evaluate or justify. If, however, the category of correct actions is, as Meinong contended, restricted to enactments of perfect duties, such as truth-telling, keeping promises and fulfilling contracts, to the exclusion of

many other departments in the business too, each of which is to be traced and mapped..."
ibid, p. 141.

other moral actions and categories of moral actions, it may be found plausible, without excluding alternative schemes of evaluation. He also noted that there is a direct relationship between the correct and the reprehensible on one hand and the meritorious and the permissible such that failure to perform the higher triggers application of the lower. Failure to honour a correct obligation such as a contract is not acceptable, it is not merely incorrect or unacceptable behaviour; it is not excusable, it is reprehensible. Similarly, failure to perform a meritorious action does not involve considerations related to correctness, but rather to permissible behaviour.⁵

Some of Meinong's views were picked up by Russell and folded into modern realism; some fed into phenomenology. But the conceptualizations about moral value lay largely unnoticed until J.O. Urmson developed the concept of '*das Verdienstliche*' - the 'meritorious' as a fourth category of moral logic appropriate to the actions of saints and heroes. This in turn led to a virtual blossoming of philosophical work on the categories of moral experience. Roderick Chisholm, for example, using strict logical categories such as the performance or non-performance of acts as good or bad, produced a grid of nine types of moral action,⁶ which he subsequently adjusted to seven.⁷

Various authors have written variations on this theme. Paul Eisenberg produced a theory of "six basic categories that a normative ethical theory

⁵Meinong, p. 90 ff.

⁶These are: 1. Totally offensive 2. Offence of commission 3. Forbidden 4. Offence of omission 5. Totally indifferent 6. Supererogatory omission 7. Obligatory 8. Supererogatory commission 9. Totally supererogatory. see Chisholm, 1963, p. 14.

⁷These are stated in logical format in Chisholm and Ernest Sosa, *Synthese*, 1966, p. 329-0.

may recognize and exemplify.”⁸ Mellema and others hold that there is a natural division into five categories.⁹ Susan Hale contends that “recently, a four-fold (sic) deontic categorization of moral actions has become near dogma,”¹⁰ whereas Elizabeth Pybus and some other neo-Kantians defend the traditional view that there are only three types of moral action, as indeed do many contemporary utilitarian writers.

An examination of the status of supererogatory actions as sketched out by Urmson, following Meinong’s depiction of the “meritorious” as a fourth category of moral action provides the entry point into the issue of taxonomy and the structure of a moral code. Those writers who accept the possibility that a category of actions beyond duty can be distinguished, we term, in line with a growing volume of literature on the subject, as “supererogationists.”¹¹

In attempting to provide a serviceable account of such matters, it is important to be clear that the ideas advanced in this thesis need to be evaluated in terms of i) their relevance to events and decision making situations in the real world, ii) their adequacy in being able to account for major objections from other quarters, and iii) their formulability in terms of reasonable simplicity. To merit acceptance, a moral code ought to be able to account for all possible cases, and all practical, as well as theoretical objections to it. The traditional tripartite classification of moral actions is

⁸These are the: 1. obligatory 2. forbidden 3. permissible and justifiable 4. indifferent 5. supererogatory 6. offensive. Eisenberg, 1966, p. 255.

⁹These are listed in Mellema, 1991, p. 106 as: 1. obligation 2. supererogation 3. neutral, 4. offence and 5. forbidden.

¹⁰These are the: 1. morally required 2. morally forbidden 3. merely permissible 4. supererogatory. See Hale, 91, p. 273.

¹¹Usage is still divided to some extent. As recently as 1992, Schumaker uses the term “supererogatorian” in the same sense.

held to be inadequate by supererogationists because it cannot account satisfactorily for actions such as saintliness or heroism which lie beyond duty. Supererogationists hold that a classification of moral actions which includes a category of non-obligatory good actions is both more relevant to decision-making events in the real world of moral experience, and more adequate as moral theory. In formulating an alternative theory of moral actions, a new taxonomy, or as Urmson uses, the term, a 'moral code,' it must be made intelligible in terms of "manageable complexity."¹² As all great moralists contend, no human values are well served by codes of moral value that cannot be applied and interpreted by the average person without recourse to courts of law.¹³ Urmson distinguished moral actions beyond the traditional trichotomy as "higher flights of morality."¹⁴ These higher flights of morality are nonetheless within the grasp of all moral agents who seek the good of others and who face risks or incur costs in the process. At the same time, any account of these matters ought to distinguish actions which lie between strict enactments of duty on one hand, and acts of saintliness or heroism on the other.

Among supererogationist writers at least, a consensus of sorts seems to be developing around what Gregory Mellema, another moral logician, calls the "standard system" which classifies all human actions as either obligatory, supererogatory, neutral, offensive or forbidden. The general purpose of this thesis is to explore the nature of supererogatory actions and the relationship of supererogatory actions to other moral actions with which they share certain features, i.e. duties of strict obligation and duties

¹²Urmson, 1958, p. 212.

¹³See Urmson, *ibid.*

¹⁴*ibid.*, p. 216

of more generalized responsibility. But in so doing, the thesis will also show how an acknowledgement of the legitimacy of the concept of supererogation affects the more general structure of a classification of moral actions.

I propose firstly to review the emergence of supererogatory action as a separate category of moral action additional to the original trichotomy. I then wish to show that if we adopt supererogation as an additional category, we need to do some other things as well, principally:

1. dispense with the category of morally neutral or permissible actions, by
2. dividing permissible actions into the supererogatory and the offensive, and
3. dividing the obligatory into those obligations which bind tightly, so we have no choice but to abide by them, i.e. perfect duties, and those obligations which allow freedom of choice as to the way in which we honour them, i.e. imperfect duties.

The thesis will attempt to demonstrate that the concept of supererogation is largely opposed by the main currents of thought in contemporary ethics, viz utilitarianism and Kantianism. At the same time, we hope to show how some consequentialist thinkers, particularly Mill, and some neo-Kantians, such as Nell (O'Neill) recognize the importance of meritorious non-duties, as a distinct class of moral action. Urmson himself believed that "simple utilitarianism, Kantianism (and intuitionism) have no obvious theoretical role for the saint or the hero,"¹⁵ and also held that because morality and moral codes should serve humanity, "utilitarianism

¹⁵ibid, p. 207.

can best accommodate the facts”¹⁶ to which he drew attention. We will take notice that some utilitarians, including New and Tranøy, have specifically made accommodations suggested by Urmson.

While some Kantian scholars have done much to make the Kantian system accommodate a category of supererogatory acts, this can be done only with some major adjustments to Kant’s views on the importance of the concept of duty. However, the ‘maverick’ Kantian views of O’Neill and others serves to do this reasonably well. The notion that supererogation is the moral equivalent of the sublime in aesthetics we find to be particularly forceful.

Interestingly, contractarian approaches are also largely supererogationist in outlook. According to Rawls, supererogatory acts themselves seem to have no place in a system of justice. Rather, it is a love of mankind, and not a sense of justice which leads to acts of supererogation.¹⁷ Such notions are not for contractors in a well-ordered society in a situation of near justice, but they are consistent with the demands of justice, surpassing the demands of duty and obligation. Rawls notes that supererogatory actions raise questions of first importance for ethical theory, but does not feel sufficiently emboldened to pursue the matter further. Other contractarians, however, have done so. David A. J. Richards pursues the issue to point of constructing a theory of ‘principles and duties of supererogation.’¹⁸ However, the idea of ‘duties of

¹⁶ibid.

¹⁷This notion is perfectly in accord with the views of the natural law philosophers about the importance of humanitas.

¹⁸These are to include civility, mutual respect, mutual love and beneficence.

supererogation' is inconsistent with the essential feature of supererogatory acts as non-duties and little seems to have come from this contribution.

The acceptability of the notion of supererogation seems to be most strongly opposed by primitive utilitarians and by certain of Kant's writings, particularly in the Critique of Practical Reason. Victorian writers on the whole began to recognize the value of supererogatory acts as a distinct category of moral action, but it is only in recent years that the notion has gained real currency in philosophy. The consequences of the doctrine of supererogation for moral philosophy, including the structure of moral experience and action, are only beginning to be thought through in any systematic manner.

Doing Good Without a Rule

Much of the discussion in this thesis deals with the ideas of moral rules on one hand, and doing good on the other. Usually, we speak of doing good within a moral framework or a code of some sort. Our intention is partly to inquire into the various types of structure housing moral actions, as it were, and to accommodate the idea of doing good within a framework of guidelines or system and hierarchy of rules. But it is instructive to recall that not all instances of doing good can be confined within a rule-based economy of moral practice. There may be many ways of doing good without a rule. One is to act only on the Law of Love of the gospel in personal morality; another is revealed in the practices of political life. John Locke in his doctrine of prerogative, provided a useful argument to demonstrate how princes, enjoying absolute authority, could do good without a rule.

Although Locke believed that the interests of the people will determine the political actions of its representatives, he made an important exception for the doctrine of prerogative, particularly when exercised by a wise prince, which enabled him to go beyond the application of positive law to realize a specific public good. Locke established the basis upon which men in a state of nature, following reason which is the law of nature, agree together mutually to enter one community, and make one body politic. The “great and chief end” of doing so, he states, is the preservation of their property, i.e. their life, liberty and estate. The first requirement of such a commonwealth is an “established, settled law received and allowed by common consent to be the standard of right and wrong.”¹⁹ These laws furthermore, “ought to be designed for no other end ultimately but the good of the people.”²⁰ The legislature which is formed to act for the preservation of the community is the supreme power, but it is at the same time only a fiduciary one and cannot be forfeited. But how is the good of the people determined? Locke proposes that the over-riding principle of civil government “salus populi lex suprema” has two aspects. Firstly, he states that the legislative body is to decide by popular vote what is to be acknowledged to be of advantage to the society and people in general. In the end, therefore, the interests of the people will determine what it is that the people will decide, on the assumption that the people will know what their interests are and that voting procedures can bring them to expression.

¹⁹Concerning Civil Government IX, 124.

²⁰ibid, IX, 142.

But Locke makes allowances for any abuse of the perceived advantage or interest of the people by positing a second category of political power which can be exercised by the sovereign to provide for the public good “in such cases where, depending upon unforeseen and uncertain circumstances, certain and unalterable laws could not safely direct.”²¹ This is the faculty of prerogative: “prerogative is nothing but the power of doing public good without a rule.”²² There are, then, two types of civil power which can produce good results - the certified and measured acts of a legislative body and the acts of a prince’s prerogative.

According to Locke, “many things which the law can by no means provide for... must necessarily be left to the discretion of him that has the executive power in his hands, to be ordered by him as the public good and advantage shall require.”²³ It is, for example, appropriate that the ruler mitigate the severity of the law and pardon some offenders. Sometimes the power of prerogative to act for the public good is done without the prescription of the law and sometimes even against it. Custom has given rulers latitude on the exercise of prerogative, which can be “nothing but the people’s permitting their rulers to do several things of their own free choice where law was silent, and sometimes too against the direct letter of the law.”²⁴ Interestingly, he asserts that the history of England attests to the fact that prerogative was always largest in the hands of our wisest and best

²¹ibid, III,158.

²²ibid, XIV,166. By this Locke refers to the freely determined actions of a prince choosing for reasons of his or her own, to act independently of a context of legislation or regulation. It is not, therefore, so much a matter of the prince acting outside the law, that is, illegally, but really beyond it, in a manner analogous to Kierkegaard’s discussion of the teleological suspension of the ethical.

²³ibid, XIV, 159.

²⁴ibid.

princes, and that “no judge on earth” can determine when prerogative is being correctly used.²⁵

Although neither Locke nor Hume have any room in their systems of moral philosophy for a category of supererogatory acts, Locke’s account of prerogative is in line with supererogatory paradigms such as pardoning and showing mercy. The structural similarity is that the laws give one set of duties and liberties but at the actual moment of intervention by the moral agent, another set of principles or guides to action determines what is actually done (e.g. to extend a pardon or show mercy, or to leave behind a lucrative professional practice to enter public life in times of particular crisis). “Doing good without a rule” is an apt characterization of aspects of supererogatory acts as well as imperfect duties and it is significant that Locke situates it in the context of political, rather than personal morality, if only because virtually all the modern supererogationists situate supererogation strictly within the context of personal morality.

Chapter Summary

The thesis begins with a full discussion of supererogation as outlined in the works of the principal contemporary supererogationist authors, particularly Urmson, Schumaker, Heyd and Mellema. The significance of supererogatory acts as non-obligatory praiseworthy actions will be developed and the concept, together with two paradigms of supererogatory

²⁵Hume also felt that the rules of justice such as prevail among political societies differed from those determining relations between men. He notes that the morality of nations is “more free” than the morality appropriate to individuals and that the rules of justice apply to princes with less force than they do to the conduct of private persons. (See Hume, *Treatise*, p. 568). “There is a system of morals calculated for princes, much more free than that which ought to govern private persons.” (ibid, p. 567). This system, according to Hume, is justifiable as being in the better interests of all.

acts, will be analyzed in detail. We then present and defend a concept of supererogatory actions as i) morally good, in terms of their intention and execution, ii) neither obligatory nor forbidden, iii) done voluntarily for the sake of a good beyond the moral agent, and iv) done at risk or cost to the agent. It will also be shown that supererogatory acts characteristically engender gratitude or admiration and are praiseworthy.

Chapter Two analyzes traditional Kantian and utilitarian interpretations of morality in terms of their respective responsiveness to the concept of supererogatory action. It will be shown that whereas both traditions show respect for supererogatory paradigms, they are anti-supererogationist in various ways, and that such features are essential parts of their respective doctrines. It will also be shown that some contemporary utilitarians and neo-Kantian theorists are favourable to the doctrine.

Chapter Three traces the origins of the distinction between perfect and imperfect duties back to the modern natural law tradition as exemplified particularly in the principal writings on ethics of Samuel Pufendorf. The value of Pufendorf's work in using a wide variety of philosophical methods including those of virtue-based ethics and utilitarianism within a fundamentally deontic focus will be explained. The study reveals important distinctions which have only been indistinctly perceived by contemporary writers on these issues.

Chapter Four deals with the issue of imperfect duty as a category of moral action distinct from perfect duty. It reviews a contemporary account of imperfect duty as generalized reciprocity. It then analyzes Kant's assessment of the distinction, together with a modified Kantian view that addresses the vexing issue of the complex of imperfect duties surrounding the relationships between individuals and collectivities,

including relations of nation-states. Dominant realist views are explored and specific examples of the imperfect duties of states will be studied in detail, particularly in relation to supererogatory elements of such actions.

Chapter Five shows how an account of moral disagreement leads into a discussion about the structure of moral action. A model of the structure of moral action is defended throughout the chapter: this model holds that moral actions are divided into the categories of prohibitions, offenses, perfect duties, imperfect duties and supererogatory actions. The claims of deontic logic are evaluated and a reconciliation of deontic and aretaic categories is presented.

CHAPTER ONE

SUPEREROGATION

This chapter assesses the significance of supererogation as a category of moral action supplementary to the traditional classification of the obligatory, the permissible and the prohibited. The first part of the chapter reviews critical discussion stemming from J.O. Urmson's reformulation of the philosophical importance of supererogation and will center on the contributions of Millard Schumaker and David Heyd. Two types of supererogatory actions - forgiveness and volunteering will be examined in detail, and various efforts at definition and justification of the concept will be studied. The last part of the chapter will present a two stage formulation and description of supererogatory actions. Firstly, it will be argued that they share the following features; i) they are morally good, in terms of their intention and execution, ii) they are neither obligatory nor forbidden, iii) they are done voluntarily for the sake of a good beyond the moral agent and iv) they are done at risk or cost to the moral agent. Secondly, I contend that supererogatory actions share two additional characteristics, namely that they engender gratitude or admiration, and that they are praiseworthy. I further contend that this formulation is more satisfactory than alternative explanations because it is more relevant to the actual practice of decision-making, because it is more adequate than alternative theories in accounting for all cases, and avoids difficulties which they entail, and that it is formulable in terms of manageable complexity.

It has become quite common to speak of actions which transcend the expected norms of deontological requirement as supererogatory, i.e. above and beyond the call of duty.¹ Although there is some discussion of supererogation in ancient and medieval philosophy, it became associated with ‘works of supererogation,’ whose supporting doctrine was dealt a near-fatal blow by Reformation figures who linked it to the sale of indulgences. Indirect mention of super-meritorious action appeared in philosophical literature up until the 18th century, but in Kant’s thought, was largely folded into an extended concept of duty as interpreted by the categorical imperative. As noted above, it largely disappeared entirely in both classical and contemporary utilitarian theory.²

Its modern-day reappearance is due very largely to Urmson’s article entitled “Saints and Heroes” which appeared in 1958.

The archetypical act of supererogation is to be found in the parable of the Good Samaritan. Supererogation does not refer to the attention given by the Samaritan to the man who had fallen among thieves by attending to his urgent needs, that is, tending his wounds and taking him to an inn on his own beast, nor even taking care of the man in the inn, nor paying his bill at the inn, but rather in taking care of his longer term needs by paying the inn-keeper a sum of money and promising to pay more if necessary to ensure his welfare. The origin of the term therefore relates to

¹ “Recently a four-fold deontic categorization of actions has become near dogma.” i.e. that actions are disjunctively i) morally required, ii) morally forbidden, iii) merely permissible and iv) supererogatory. See Susan C. Hale, p. 273. John Ladd, whose work slightly predates Urmson’s, observed that typical supererogatory actions cannot be seen as either obligatory, wrong or indifferent. They are “somewhere between being obligatory and indifferent.” Ladd, p. 127.

² See John Rawls’s remark in *A Theory of Justice*, p.117 : “it seems offhand that the classical utilitarian view cannot account for {supererogatory acts}.”

the use of the Latin verb "supererogare" in the Vulgate version of Lk 10:35 in which the Good Samaritan, addressing the inn-keeper says, "take care of him, and whatsoever thou spendest more, I will repay thee." The Latin text reads: "Curam illius habe: et quodcumque supererogaveris, ego cum rediero reddam tibi." An earlier translation makes the meaning clearer: "Have care of him, and whatsoever thou shalt supererogate, I at my returne will repay thee."³ The Good Samaritan, of course, did more than his duty. Perhaps he did more than his duty just by stopping to attend to the man who had fallen among thieves in the first place. But that is not the heart of the matter. As an object lesson in mutual trust, the parable shows that the innkeeper is given the added responsibility of both caring for the wounded traveller, and accounting for his services to the Good Samaritan, who makes a promise to make good any additional expenses which might be incurred by the innkeeper, when next he returns. The common view is that all of the Good Samaritan's actions were supererogatory, but the genesis of the concept indicates that the conditions of a characteristically supererogatory act are more complex than a simple display of superabundant virtue.

Saints and Heroes

Urmson takes for granted that most philosophers discriminate "three types of action from the point of view of moral worth"⁴ - obligatory actions, permissible ones, and wrong ones that we ought not to do.

Urmson states that despite the widely held nature of this classical

³ Cited in Mellema, 1991, p. 14.

⁴Urmson 1958, p. 198.

trichotomy, as he terms it, or variations on it, it is “totally inadequate to the facts of morality”⁵ because it is unable to account for two types of action (saintliness and heroism) which “most conspicuously lie outside such a classification.”⁶ Urmson notes that two types of situations in which the terms ‘saint’ and ‘hero’ are used can be subsumed under the tripartite division. Firstly, a person may be called a saint if that person does his or her duty in contexts which would lead most people not to do it, and does so as a result of exercising abnormal self-control: similarly, a hero is one who exercises abnormal self-control in fulfilling a duty which terror, fear or a drive to self-preservation would have deterred others from doing. Sainly and heroic actions he describes in analogous terms. Secondly, Urmson notes that the traditional classification can account for persons who perform such actions “without effort.” Both cases, he claims, deal with issues which fall under the concept of duty.

But Urmson advances a third use of the terms ‘saintly’ and ‘heroic’ which is not captured by the traditional formulation, namely the performance of actions “that are far beyond the limits of...duty,”⁷ whether by control of contrary inclination and interest or without effort. This description of a saint or hero, par excellence, involves not mere actions consistent with duty, but a dedicated, self-effacing life in the service of others “not even contemplated by the majority of upright, kind and honest men, let alone expected of them.”⁸ As examples, Urmson cites the valiant grenadier who smothers a grenade with his own body in order to protect

⁵ibid, p. 198-199.

⁶ibid, p. 199.

⁷ibid, p. 201.

⁸ibid, p. 202.

his comrades, and St. Francis of Assisi, who experienced self-reproach in preaching to the birds with apparently meagre results. Urmson notes that actions of saints and heroes are commonly perceived by them as matters of duty.⁹

But it is only a modesty so excessive as to appear false that would lead the valiant grenadier, were he to survive the action, to say, 'I only did my duty' - for we know, and he knows, that he has done more than duty requires...Subjectively, we may say, at the time of the action, the deed presented itself as a duty, but it was not a duty."¹⁰ This conclusion could be tested by imagining the impossibility of giving an order, or command, to this effect.

This example is more complicated than Urmson has chosen to explain. While it may be true that the valiant grenadier may have felt he was acting out of duty, and in accordance with it, as Kantians might well suggest, he can also be seen to have undertaken virtuous action on the basis of good character alone. Or indeed, he may have taken a calculated action on behalf of the greatest happiness of the greatest number. He may in other words, have taken his action on the basis of quite a variety of motivations, some of which might have been understood by his comrades, and others which might not have been. The references to 'control of fear' and 'without effort' are best interpreted as perceptions. What sensation of fear or effort saints or heroes may experience is forever inaccessible to others. It is probably more correct or prudent under the circumstances to say that such people appear to control their natural fear and appear to do so

⁹"Such actions do not present themselves as optional to the agent when he is deliberating." *ibid*, p. 204.

¹⁰*ibid*, p. 203.

without effort. The point for Urmson, however, is that these “higher flights of morality” ought to be accounted for within philosophical systems, and that neither Kantianism nor utilitarianism can readily deliver.

Urmson concludes that we have to deal in ethics not with a simple triad of duties, permissible actions and wrong actions, “but with something more complicated.”¹¹ Sainly and heroic actions clearly stand outside duty or go beyond it in at least one crucial aspect. Urmson also suggests that cases of disinterested kindness and generosity also go beyond duty, i.e., they are clearly more than duty requires and yet hardly ask for the high titles of the saintly and the heroic.

Supererogationist accounts of moral theory do not depend on the existence of saints or heroes. Such persons are recognized as such by others for conspicuous actions or a series of actions but most supererogationists would accept that many self-effacing, self-denying, self-sacrificial actions falling sort of sainthood or heroism would be considered supererogatory. Nonetheless, it is important for Urmson’s argument that saints and heroes have existed, or indeed do exist.¹² But quite apart from egregious examples of heroism or moral saintliness, supererogationist writers have claimed that it is commonly accepted knowledge that kindnesses of various types are more than morality requires, cannot be expected, let alone demanded, but are vital in maintaining structures of social life from reduction to sterile enactments of duty and interpretations

¹¹ibid, p. 204-205.

¹² Robert Merrithew Adams refers specifically to Albert Schweitzer, Gandhi, Martin Luther King, jr and Mother Teresa as saints. Susan Wolf suspends judgement as to whether moral saints exist or not, although she admits that Mother Teresa is a morally better person than Katherine Hepburn. Wolf argues that an unrelenting drive towards moral perfection is unattractive in that it necessarily displaces other positive human values.

of law. Under such an interpretation, supererogation has a much broader field of application.

Urmson cites these observations as "simple facts...of which we are all, in a way, perfectly well aware."¹³ While it would be absurd to suggest that moral philosophers have been unaware of the existence of saints and heroes, it does seem that the facts of saintliness and heroism have been neglected in their general systematic accounts of morality. It is clear that for most utilitarians, all acts of saintliness and heroism will be indistinguishable from other actions such as simple promise-keeping if any action is a duty that will produce the greatest possible good in the circumstances.¹⁴ As for Kant, it is clear that the categorical imperative is a duty equally and utterly binding on all men. It follows, according to Urmson, that it is surely evident Kant could not consistently do justice to the facts before us. Traditional moral theories therefore simply fail to account for actions which are of moral value and which an agent may be called upon to perform, but which cannot be demanded and whose omission cannot be called wrongdoing.

Urmson's view is that utilitarianism can be more easily modified to account for these facts of "higher flights of morality"¹⁵ than other comprehensive moral doctrines. He claims that we properly recognize morality that goes beyond duty; "for it seems to me incontestable that properly or improperly we do so."¹⁶ But morality he claims should serve human needs; morality must work. He then offers five arguments or

¹³ibid, p. 206.

¹⁴"There is no obvious theoretical niche for the saint or the hero for most utilitarians" ibid, p. 207.

¹⁵ibid, p. 209.

¹⁶ibid, p. 210.

grounds on which a moral code should distinguish between simple basic rules, summarily set forth, and binding on all, and the higher flights of morality of which saintliness and heroism are outstanding examples.¹⁷

Urmson therefore distinguishes basic duty from other acts of moral worth. He claims to detect this distinction in ordinary moral thought. He states that we should not demand ideal conduct from others, in the way in which we must demand basic morality from them. But imperatives of duty to prohibit intolerable behaviour, if men are to live together in society and agree to observe a minimum of cooperation to this end, require the treatment of compliance as compulsory and dereliction as liable to public censure. Utilitarianism can best accommodate these facts. But by utilitarianism, he means only a theory of moral justification in terms of results. The important point, however, is that the higher flights of morality are moral facts, not that they can be accommodated by a version of utilitarianism.

Urmson's observations attracted immediate and widespread attention, much of which deals with the concept of supererogation. One obvious difficulty with Urmson's presentation is the concept of a value-neutral moral action. Urmson notes that the traditional theory recognizes actions that "are right insofar as they are permissible from a moral standpoint, and

¹⁷These are briefly as follows: 1. It is essential to retain a special status of urgency and to exert exceptional pressure on occasion. Heroes, especially, are necessary for such purposes. 2. The performance of basic duties must be within the ability of ordinary men in ordinary circumstances, or at least 'not too far beyond the capacity of ordinary men.' Otherwise a general breakdown of compliance is the inevitable consequence. 3. A moral code must be formulable in rules of manageable complexity. Rules only function if it is reasonably easy to recognize what actions are desirable. 4. Duties require compliance from others: a line must be drawn between what we can expect and demand from others and what we can merely hope for and receive with gratitude when we get it. Duty falls on one side of this line and acts with moral value on the other, and rightly so. 5. Pressures of constraint condition basic moral duties, but cannot be used to impose acts of heroism.

not ruled out by moral considerations, but that are normally required of us, like the lead of this card or that at bridge.”¹⁸ But no moral issues are involved at all in leading one card or another card. Such actions have no moral value at all. As such, the category of a value neutral moral action is at least an empty one, if not completely indefensible. While it may be true that even the most trivial of our actions could give rise to consequences which might have moral value, a contention in support of which both folklore and literature provide abundant testimony, such issues are beyond any reasonable concept of responsible moral agency. But Urmson’s entire argument is premised on the contention that the categories of prohibited and permissible actions are to be retained, and that an additional category is required to deal with actions above and beyond basic duty, or as he says “rock-bottom duty.”¹⁹

Another problem with this theory is that it overlooks the distinctions between perfect and imperfect duties, and between these two categories and the range of supererogatory actions exemplified by saintliness and heroism. Urmson’s account of this distinction is incomplete as it stands, because on one side of the line which separates basic duty from ‘acts with moral value’ are to be found cases of kindness and generosity, i.e. imperfect duties, as well as acts of egregious merit such as those of saintliness and heroism. A fair defense of Urmson can be mounted however, by showing that when he meant perfect duty, he referred to “rock-bottom duties,” that when he referred to imperfect duties, he used the term “acts of moral value” and that when he meant to refer to acts of supererogation, he used the term

¹⁸ibid, p. 198.

¹⁹ibid, p. 204.

“higher flights of morality.” Unfortunately however, these distinctions are not explicit in Urmson’s work.

Furthermore, and more importantly for the debate on this issue which followed, several philosophers were quick to point out that Urmson’s remarks about supererogatory acts were of rather broader application than could be restricted to acts of saintliness and heroism only. The most radical advocate of this extended concept of supererogation, and the first scholar to investigate the issue in a systematic manner following on from Urmson is Millard Schumaker.

Schumaker and Supererogatory Paradigms

Schumaker argues that everyday life provides multiple examples of actions which surpass duty, and that they can only be explained by an expanded interpretation of supererogation. These examples arise from real cases of moral decision-making in the world. Instantiations of supererogatory acts are advanced as facts which, together with Urmson, Schumaker claims have been neglected by the traditional accounts of moral experience. He notes that ordinary language continues to offer good reason for accepting the legitimacy of the concept of supererogation, at least where that word refers merely to the doing of more than that which one’s duty requires. Schumaker’s observations are certainly based on familiar grounds. We are in fact surrounded by a culture of exhortation and encouragement to ever greater efforts to help others in need of one sort or another.²⁰ “It is a stubborn fact that the concept of supererogation (but

²⁰ “I challenge a new generation of young Americans to a season of service - to act on your idealism by helping troubled children, keeping company with those in need,

certainly not the word!) and concepts implying it are in frequent use in moral talk.”²¹ We might add that such has been the case throughout the modern era and well beyond into the distant past.²² Schumaker’s conception of supererogation is most commodious. He thinks that Urmson deformed the development of supererogationist theory by concentrating on egregious acts of supererogation when so many other examples of it lie much closer to hand. Many acts of everyday kindness are supererogatory paradigms for Schumaker. He says that common expressions such as “you ought to but you don’t have to” are *prima facie* indicators of supererogatory action, and that they are justified by the fact that “so many people on so many occasions judge certain modes of behaviour to go beyond obligation.”²³

Schumaker is the first contemporary philosopher in the Anglo-American tradition to have attempted a comprehensive definition of supererogation which is not reducible to the primitive terms of deontic logic, i.e. using one moral agent, categories of “shall” and “may” and their negation. As we shall see, supererogation is a complex of meaning involving several dimensions including assessments of “other-directed” intentionality as well as actual behaviour.

Schumaker’s definition is as follows:

reconnecting our torn communities...We need each other. And we must care for one another.” from the Inaugural address of President Clinton, January 20, 1993.

²¹ Schumaker, 1977, p. 7.

²²Hans Huizenga, the Dutch social historian believed that the parable of the Good Samaritan was first taken seriously only by St Francis.

²³ *ibid.* Note that favours and similar actions had been traditionally regarded as imperfect duties. See esp Pufendorf, *ING*,III,5,6.

Supererogation = df. “acts the performance of which are conjunctively (1) neither forbidden nor required by morality, (2) good, and (3) done primarily for the sake of someone other than the agent.”²⁴

Supererogatory acts are therefore intentionally altruistic, optional good actions. For Schumaker, a paradigm of supererogation is the act of doing favours, from which follow a series of other supererogatory paradigms including giving gifts, making donations, offering bonuses, tips and gratuities, sacrificing for others, volunteering, almsgiving and charities, generosity, grace and periods of grace, forgiving offenses, pardoning and being merciful. Each of these putatively supererogatory actions contain particular complexities. Many supererogationist writers show concern for justifying use of the concept through the expository device of supererogatory paradigms. In order to draw out Schumaker's insight by way of illustration, we will pursue a “Schumakerian” analysis of two such paradigms; one internal action - forgiveness - and one external action - volunteering.

Forgiveness is an archetypical variety of supererogation for Schumaker, and for other supererogationist writers including Heyd. It is also a theme of theologians such as Berdyaev, Bultmann and Bonhoeffer as a leading indicator of action in the world according to Christ's “law of love.” Because of the importance of this discussion for religious ethics, we begin the discussion of forgiveness with a theological account which also comprises the principal non-religious features of the phenomenon. Paul Lauritzen sketches a paradigmatic case of forgiveness as follows:

²⁴ *ibid*, p. 11.

1. A injures B thus creating a moral debt between A and B and a breach in the relationship between A and B.
2. This debt is characterized on the one hand by A's obligation to B to apologize, make restitution, etc., and on the other hand, by B's justified retributive response of resentment.
3. A discharges his obligations to B and seeks forgiveness from B.
4. B relinquishes his right to resentment (thus cancelling the debt) and readjusts his attitudes towards A in line with a relationship of moral equality (thus repairing the breach in the relationship between himself and A).²⁵

Lauritzen notes that this model holds for a non-religious analysis of forgiveness, rather than a religious one, for which condition 3 is irrelevant. The distinction between a religious and a non-religious interpretation turns on the question as to whether acts of contrition are necessary for forgiveness. It is to be therefore assumed that an act of forgiveness covers both offenses as well as prohibited actions. Lauritzen claims that the religious view may be compatible with the non-reconciliation of the parties: Christians would hold that B is still expected to discharge the resentment he may feel at A's actions, although it may well be that B could still do this at the same time without abandoning a retributive response, such as expressing indignation. The objects of B's actions would nonetheless be to remove voluntarily his feelings of vindictiveness.

On both the religious and non-religious accounts of forgiveness, two steps are observable in the paradigmatic formulation: i) negatively, a

²⁵ See Lauritzen, p. 144.

remission of attitudes of resentment evoked by the injury, and ii) an effort to restore a broken relationship to the status quo ante. In the absence of contrition, non-religious forgiveness is a problematic concept. But in this way, the law of love makes religious forgiveness a duty, whereas non-religious forgiveness can rightly be termed supererogatory.

Recent philosophical discussion of the issue has largely been occasioned by R.S. Downie's 1965 paper in which he distinguishes between forgiveness and pardoning on one hand and between forgiveness and condonation on the other. Two examples illustrate the difference. If A says that he will never forgive B for what B did to C, what is really meant is that such actions could never be excused or condoned. But only the party to whom the injury was done has the power to forgive. Similarly, if one were to say 'I can never forgive myself,' what is normally implied is that an injury was actually done to another person, rather than to oneself. One interesting exception to this generalization which is raised in the literature on forgiveness is the case of Conrad's hero Lord Jim, whose failure to forgive himself led indirectly, but surely, to his eventual self-imposed downfall.

Downie notes that the act of pardoning can only be done by a third party. Historically, the act of pardoning has been a prerogative of the sovereign. Recent Presidents of the United States have used this faculty to remit punishment with some frequency. When the President issues the pardon through whatever procedure using a construct analogous to "I pardon N," N is thereby pardoned. The words themselves do the trick: Nixon or Weinberger is off the hook. But more is required in the case of forgiveness. The words "I forgive you" are not sufficient in and of themselves to effect forgiveness. Some behaviour modification, namely the

neutralization of resentment, is required. Downie refers to the agape relationship as “a loving concern for the dignity of persons conceived as ends in themselves.”²⁶ “The forgiver is required to prevent any barrier remaining permanently between him and the forgivee (at least on his side, for the forgivee may refuse to accept forgiveness) and to renew trust in him. The attitude of agape becomes the forgiving spirit in a context of injury.”²⁷

The analysis of forgiveness is completed by two special concerns: i) the repudiation of resentment, and ii) the restorative value of forgiveness. Strawson in his 1962 British Academy Lecture asked what it is to be forgiven. It is, he says ‘partly to acknowledge that the attitude displayed in our action was such as might properly be resented; partly to repudiate that action. To forgive is to accept the repudiation, to forswear the resentment.’²⁸ The question naturally arises however, whether it is possible to forswear resentment, and yet not forgive the person who committed the wrong in the first place. It would appear understandable if moral agents, such as the parents of a bomb victim, for instance, could neutralize the bitterness in their hearts but still refrain from forgiveness on good moral grounds. Reasons for such a course of action could include apprehension that forgiveness might encourage additional offenses of a similar violent nature by the offending party whether or not the latter had undertaken a change of heart, or indeed lead indirectly to the commission of the same offence by others. In such a way, resentment could be repudiated and forgiveness withheld.

²⁶ Downie, p. 133.

²⁷ *ibid.*

²⁸ Quoted in O’Shaunessy, p. 349.

Now, to this it may be answered that failure to forgive while repudiating resentment only uncovers an indissoluble element of vindictiveness which is occasioned by the mere recognition of a wrong experienced as suffering. Aurel Kolnai sees a paradox in this problem which he attempts to resolve without the “Christian tinge” which he says surrounds the issue. He claims that the paradox lies in the fact that on one hand, forgiveness does fade away in condonation, but on the other is endangered by becoming pointless, i.e., the wrong-doer has by a change of heart and reparation suitably annulled and eliminated his offense. But vindictiveness is itself a vice and a vindictive person cannot properly forgive; all one can do is overcome one’s own vindictiveness. Kolnai concludes that whereas a change of heart in the person asking forgiveness is the standard pre-condition for making forgiveness a quasi-obligation for the forgiver, there is much virtue in “casting one’s bread upon the waters” and forgiving without a requisite change of heart. Such an attitude of trust in the world, he says, unless it is vitiated by hare-brained optimism and dangerous irresponsibility, may be looked upon, “perhaps as the epitome and culmination of morality.”²⁹ Interestingly, this attempt to produce an analysis devoid of a ‘Christian tinge’ in the end comes to show considerable resemblance to Lauritzen’s theologically-driven analysis. Offering trust in advance, notes Kolnai enigmatically, may increase the objective trustworthiness of the recipient, but a definite risk is involved that the confidence will not be returned. The issue of risk is particularly germane to supererogatory actions.

²⁹ Kolnai, p. 105.

We complete our discussion of forgiveness by noting the often overlooked feature that forgiveness is restorative of relationships. Horsburgh, for example, claims that forgiveness is always aimed at healing a breach in a personal relationship. He states that it is as much a process as an action and that it is initiated by a decision to forgive, conjoined with a suppression and gradual extirpation of feelings of resentment. This volitional aspect begins a process which is ended by the elimination of feelings of injury. "Cleansing one's mind of hatred and bitterness is often a lengthy process of self-conquest."³⁰ He also suggests that forgiveness may be partial or impermanent and that there may be degrees of it. The process nature of forgiveness, he argues, means that it is often incomplete, and even reversible in light of developments in an actual situation. Someone may decide to forgive a person who caused him injury in an automobile accident, but truncate this decision upon learning, for example, that the same person had previous convictions for reckless driving. Like an archer, one should, advises Horsburgh, always aim for complete and final forgiveness, but one may not achieve it on every occasion.

We conclude that forgiveness is an internal act which requires both a commitment on the part of the forgiver to repudiate resentment, and a willingness to renew trust in a loving spirit. It simply cannot be commanded as a duty. Forgiveness is restorative of personal relationships,³¹ but it may be withheld without encountering moral

³⁰ Horsburgh, p. 271.

³¹ It may also have wider political consequences. According to many observers, the forswearing of resentment against his captors allowed Nelson Mandela to restore racial harmony in South Africa.

sanction. When it is freely offered without a change of heart on the part of the forgivee, it has very great moral value: it is supererogatory.

Supererogationist writers typically include volunteering as a supererogatory paradigm, but such analyses for the most part are confined to institutional settings of the type in which an individual accepts to do something on behalf of a group in a situation of high risk. Schumaker recognizes that a certain amount of compulsion characterizes such situations. Standard examples of this type of supererogatory behaviour abound in military lore and are even cited by Urmson as typical of supererogatory actions. But such high risk situations are accompanied by other volunteer actions which may involve less risk but greater cost in terms of commitment over a longer period of time than a single military engagement. The entire field of volunteer activity in social and community affairs, for example, can be viewed as supererogatory acts.³²

The concept of accepting responsibility for the vulnerable is an essential one in this connection. Goodin claims that the idea of protecting the interests of vulnerable people is the principal generator of special responsibilities from beneficent actions. He states the “first principle of individual responsibility” formally as follows: “if A’s interests are vulnerable to B’s actions, and choices, B has a special responsibility to protect A’s interests; the strength of his responsibility depends strictly upon the degree to which B can affect A’s interests.”³³ Goodin states this principle as a matter of justice: vulnerabilities are matched by

³²The activities of moral agents on behalf of non-governmental organizations can also be viewed in this light to some extent.

³³ Goodin, p. 118.

responsibilities. “Looking at the situation from the point of view of the vulnerable party, we must conclude that those to whom he is most vulnerable should have the heaviest responsibility for protecting his interests. Some people have more or better exclusive opportunities for inflicting or preventing more or less serious harms. Those to whom a person is relatively more vulnerable have greater responsibilities.”³⁴

This discussion raises two significant points relating to supererogatory actions: the nature of the responsibility and its agent. To say that someone has a responsibility is to imply that something should be done about it: it is obligatory in a general sense to do something. But how much should be done depends on the degree of vulnerability of the recipient of the action. If the vulnerability is an extreme one, then there is a responsibility to employ extreme measures, perhaps even heroic ones, to relieve the degree of vulnerability. But is it obligatory to go to such lengths of self-sacrifice for others? Goodin avoids this issue by stressing the limitation on one’s actions to alleviate vulnerability. “As the connection between my actions or choices and their potential injuries becomes increasingly tenuous, my responsibilities in respect of them are also correspondingly attenuated. Thus I have less responsibility for rescuing someone drowning on a distant shore than someone drowning at my feet.”³⁵ But it is obvious that the need of the person drowning far away is just as urgent as that of the person drowning at one’s feet, and it is clear that a responsibility exists to do what one can to assist all whose who may be drowning. Supererogationists contend that the action of freely accepting

³⁴ *ibid*, p. 121.

³⁵ *ibid*, p. 122.

greater measures of responsibility than those defined by the expectations of reasonable people render such actions supererogatory. Furthermore, the act of accepting responsibility when it cannot be required as a matter of duty constitutes a supererogatory act.

Similarly, issues of personal cost may or may not be high risk operations in themselves, but appear no less praiseworthy in terms of personal commitment. Some nations do contribute large per capita amounts to alleviating hunger and distress in the third world. Other nations which could do as much or more do not do so. Some people and societies are interested in the rescue of homeless migrants or “boat people”. The medical personnel who volunteer for work for “Médecins sans frontières” or “Médecins du monde” may or may not be exposed to high risk environments. Their actions are nonetheless supererogatory because of the other personal costs which they incur. None of these personnel were required in any way to make such sacrifices or undertake intrinsically hazardous acts and none of their financial backers had any direct obligation to accept responsibility for the vulnerable in the way they did.

Volunteering of this sort combines elements of the military type with its high degrees of risk and the correspondingly higher chances of achieving beneficial results, with the actions of volunteers supporting a social cause or mission which may involve lesser risks, and a correspondingly greater likelihood of bringing about good consequences, if in lesser amounts, per individual involvement, as it were, on the whole. The action of accepting leadership is not ipso facto supererogatory. Politicians see positions of leadership as opportunities from which to expand their personal sphere of accountability and realize various ambitions thereby, and other civic leaders do strive to expand the exercise

of responsibility in order to achieve still higher public office. Such actions are most often not supererogatory, unless they are taken for the primary reason of benefitting someone else other than the moral agent, in this case the civic leader himself. However, when such actions are undertaken freely, and directly in response to the needs and vulnerabilities of others, then they are supererogatory.

Supererogationist writers also mention the importance of volunteering in the context of showing leadership. Heyd, for example notes that whereas a duty exists for someone to do a certain number of actions of a certain class, there is no indication as to the person on whom the obligation falls. "A duty which applies disjunctively to a group requires the performance of a particular action, yet fails to specify the individual agent who should undertake it. Thus, volunteering cannot be analyzed on the model of over-subscription to duty, doing more of a certain class of actions, but should rather be understood on the model of doing more than is required [i.e. doing more than one's share according to the verdict of random selection]."³⁶

Volunteers are also distinguished by the degree of personal commitment they bring to various good causes. The volunteer who solicits funds for the Red Feather campaign, to develop Ladd's example, is more committed than is a donor who makes only a token contribution, or one in line with mere custom or expectation. The volunteer commits a measure of his or her own self-esteem to the success of the venture; if the cause succeeds, the volunteer has reason to feel proud, but there is always a risk that the campaign will slump, that prospective donors will reject charitable

³⁶ Heyd, p. 151.

overtures and appeals, or perhaps even offer gratuitous offence and insult. There are higher risks, therefore, in volunteering than in other of the supererogatory paradigms mentioned by Schumaker, such as donating, gift-giving, or giving bonuses, tips and gratuities. For this reason, it is more typically supererogatory, because in addition to carrying relatively substantial degrees of both risk and personal cost in terms of time, energy, as well as psychological and financial resources, it is obviously good in terms of its intended consequences, neither obligatory nor forbidden and done principally for the sake of someone other than the moral agent. In addition, it is praiseworthy, and engenders either gratitude or admiration, or perhaps even both.

One final issue which merits discussion here is the question as to whether volunteering on behalf of non-rational beings, inanimate objects or only partially organic natural processes, such as climate change, can be considered supererogatory, and if so, under what conditions. It is a fact that the actions of campaigners on behalf of animal rights or conservation of natural resources, such as forests and the like are often considered to be admirable. We may even be grateful for the actions of others who have been active in these and similar fields by, for example, developing institutions which promote animal welfare and preserve natural wonders, thus bringing benefits to us and others in terms of personal or aesthetic enjoyment. Similarly, it can be said that work on behalf of such causes by ensuring the survival of endangered species of plants or animals, may well be supererogatory, not to be sure in terms of benefits to inanimate objects or non-rational beings, but in terms of benefits to be enjoyed by future generations.

Heyd's Definition of Supererogatory Action

Although Urmson reclaimed supererogation for philosophy, we have seen that his concern was for peak moral performances. Schumaker, in his endeavour to recognize wider behavioural limits for supererogation was nonetheless obliged to recognize trivial variants of it. David Heyd attempts to chart a middle course, by restricting the definition, but he does not exclude the notion of trivial instantiations of it. Heyd's work is important because his 1982 book simply entitled *Supererogation* was the first published on this issue alone. Some of his work shows a debt to Schumaker, but it remains the most complete account of the issue available to us.³⁷ Heyd is no less concerned than Schumaker to account for the existence of supererogatory acts in the moral universe. He notes that "we usually regard a social organization or group that does not encourage supererogatory action (let alone that fails to leave room for it) as morally deficient."³⁸ But Heyd is most concerned to accord theoretical legitimacy to the concept of supererogation itself. Heyd's definition of supererogatory action is as follows:

An act is supererogatory if and only if:

- (1) it is neither obligatory nor forbidden:
- (2) its omission is not wrong, and does not deserve sanction or criticism- either formal or informal:

³⁷ Mellema (1991) is the only other full-length book treatment of the issue in English at least. This work follows on from the work of Schumaker and Heyd and provides valuable insights into the writings of other scholars, including Chisholm, Trianosky and Curtis.

³⁸ Heyd, p. 178.

(3) it is morally good, both by nature of its intended consequences and by virtue of its intrinsic value (being beyond duty):

(4) it is done voluntarily for the sake of someone else's good and is thus meritorious.

Heyd has here defined supererogatory actions, not supererogation itself as a category of moral action, as did Schumaker. This device allows Heyd more scope to identify nuance and constitutes a more flexible basis for analysis than Schumaker's presentation. Let us examine in greater detail what it is that Heyd is attempting to establish with this definition. Heyd explains that conditions one and two are formulated in weaker and negative terms whereas conditions three and four are stronger, indicating positive features. The important point about these first two conditions, according to Heyd, is that condition one assigns supererogatory acts by implication to the realm of the permissible, and that condition two separates them from permissible acts to become optional acts. Heyd's treatment of this distinction is less than totally convincing because he admits that "the first condition is logically speaking superfluous because condition two is logically stronger and entails it."³⁹

Heyd's second condition contains what he terms the necessity of immunity from critical reaction. Heyd attempts here to recast for supererogatory actions Kant's argument about the fulfillment of imperfect duty.⁴⁰ Heyd seeks to establish the impossible - a sanctuary from moral

³⁹ Heyd, p. 116.

⁴⁰ Kant notes in the *Metaphysics of Morals*, p. 194 [K.G.S., VI, p. 390], that the fulfillment of imperfect duties constitutes merit (*meritum* = +a), but failure to perform them is not blameworthy (*demeritum* = -a) but rather *deficiency in moral worth* (= 0). Kant's

criticism on this earth.”⁴¹ Because supererogatory acts are not morally binding in any way (condition one), failure to perform them is in no sense blameworthy: supererogatory acts are optional from the standpoint of the moral agent. Such actions, he says, echoing Chisholm's formulation of “non-obligatory well-doings” are “optional, morally good actions.”⁴² This condition is not necessary to the definition of supererogatory acts. It is an additional wish, rather than a definitive feature. To some extent, it detracts from the genuineness of supererogatory action, because costs or risks are certainly involved in Heyd's concept, and risks of ridicule can hardly be excluded in advance. It can be easily imagined, for instance, that an unsuccessful daring venture would be naturally subject to criticism if important resources were expended or avoidable dangers risked through what may have appeared in hind-sight as recklessness, but which would, if the venture had succeeded, likely have appeared and perhaps even been rewarded as praiseworthy in some respect. Another criticism of Heyd's claim of immunity from critical reaction is suggested by Gregory Trianosky who notes that however acceptable such views may be from a deontological standpoint, negative judgements concerning the failure to perform supererogatory acts are always permissible from an aretaic viewpoint. This is confirmed, he states by the fact that the conventional response for failing to perform supererogatory acts is to proffer excuses.⁴³

argument works better than Heyd's because it imposes no restriction upon what performance of a moral action might be deserving of criticism.

⁴¹ “Anything can be said, and in consequence, written about anything... We are at liberty to say anything, to say what we will about anything...” Steiner, 1989, p. 53.

⁴² *ibid*, p. 126.

⁴³ Trianosky, p. 31.

Heyd's third condition - that the action is morally good, both by virtue of its intended consequences and its intrinsic value (beyond duty) - is more germane to his definitional project, but it is still unsatisfactory. While he maintains that supererogation is a quality of actions, and that it is best to avoid speculation on motives, he does provide a glimpse into the intention of the moral agent by insisting that the intended consequences be morally good. Furthermore, he can be accused of "begging the question" in asserting that the intrinsic value of such actions be "beyond duty," since this is his objective to establish. This aspect of his definition raises the question which was only hinted at in our discussion of the previous condition, namely, whether an act may be supererogatory if it does not produce any good consequences. Supererogationist writers generally respond in the affirmative. Peterfreund also argues that an action can be supererogatory even if it has no consequences: "there are cases in which the act becomes even more praiseworthy if the consequential possibility of relieving someone's distress is practically nil."⁴⁴ He maintains that an act would be supererogatory in such a case because of the agent's "high-minded motives. For even if [the moral agent] failed to produce any benefits...by his performance, we would still admire his noble effort and call it supererogatory."⁴⁵ An analogous criticism is offered by Mellema who claims that an extraordinary action taken on the basis of principle alone, i.e. without any consequences, is sufficient justification to be considered supererogatory. He gives the example of a hostage who refuses to swear allegiance to his captors, and claims that Heyd's conditions (3) and (4) are

⁴⁴ Peterfreund, 1978, p. 55.

⁴⁵ *ibid.*

invalidated on the grounds that such actions have no consequences for anyone other than the hostage. This is a less successful attack on Heyd's conditions than that mounted by Peterfreund, however, because even such abstract actions as refusing to do something out of principle do have consequences, some of which may indeed be beneficial.

Heyd actually justifies the classical Christian examples of "works of supererogation" e.g. celibacy and obedience, as legitimate instances of supererogation on the quite utilitarian grounds that they promote positive values in indirect fashion and advance the good of others more directly. It is characteristic of supererogatory acts, according to Heyd, that they are intended to be consequential, in contrast to duties, which may not have identifiable consequences. Heyd stoutly resists all reductionist approaches, particularly any attempt to reduce supererogatory acts to duties. At the same time, he recognizes that supererogatory acts are both correlative and continuous with duty.

The fourth and final condition advanced by Heyd is concerned with altruistic intention and personal merit; it introduces the moral agent as the author of the moral act. Heyd charitably acknowledges Schumaker as the first writer to have recognized this point. It is essential that a supererogatory act be directed towards the welfare of others. But Heyd distinguishes this altruistic intention from an altruistic motive. Motives or feelings which move us to do moral actions are diverse in character, he states. They follow the will and are not invariably virtuous, whereas the altruistic intention to benefit others remains a distinguishing feature of supererogatory acts. Although the "motives" may be "self-regarding;" the intention must be "other-regarding." Now many acts, he notes, are done out of a sense of duty, but are in fact supererogatory. The fact that an

agent may feel duty-bound to perform an action and not realize, recognize or acknowledge that he has acted supererogatorily, may simply be a case of “moral modesty.” This would apply to Urmson’s example of the valiant grenadier, for example. Or, he may take it to be morally obligatory, or at least morally binding, believing it not to be supererogatory. Modesty may add to the praiseworthiness of the action, but it is not a defining characteristic. The possibility that a moral agent may actually believe his action to be obligatory does not itself exclude it from being supererogatory.”⁴⁶

This issue is of prime importance for those who oppose the idea of supererogation as a separate type of moral action. Susan Hale claims that saints and heroes typically see their actions as dutiful, which others see as plainly supererogatory. But rather than accept the intuitive answer that would no doubt be given by an impartial observer, that such actions were obviously not duties, she claims that because they are thought to be duties by the moral agents, they are duties. She makes the significant claim that they are imperfect duties, and that they are morally required not just for saints and heroes, but for all moral agents. The nature of imperfect duty will be reviewed in Chapter Four and the relationship of supererogatory action to imperfect duty will be reviewed in Chapter Five.

The last point in Heyd’s definition deals with the question of assigning merit. Merit he sees as distinct from praiseworthiness, in that it is more objectively related to criteria of desert, rather than to contingencies of personal like or dislike, taking into account primarily the act itself and not its motivation. Feinberg also mentions the

⁴⁶ Heyd, p. 138.

meritoriousness of supererogatory acts.⁴⁷ The difficulty with Heyd's formulation is that he draws an inference from within what he asserts to be one element of a definition. He does, however, note that moral agents who act supererogatorily can accumulate "a certain surplus" of moral credit, which may possibly be recognized with reward or praise. It is, however, always deserving of gratitude.

Heyd situated supererogatory action within the context of duty-based moral systems. As both correlative and continuous with duty, Heyd contends that supererogatory actions only have meaning in relation to obligatory acts, and that both duties and supererogatory acts have a common scale of values.⁴⁸ Some supererogatory acts are easily adapted to the continuity factor, particularly those which Feinberg has termed "over-subscription," such as contributing much more than one's share, walking the extra mile, and so forth,⁴⁹ a concept also accepted by Rawls.⁵⁰ Other actions which cannot be considered duties such as acts of mercy, or instances of volunteering, are nonetheless correlated with duty and their theoretical accountability must be considered to be of a quasi-deontological type. This aspect of Heyd's theory implies acceptance of trivial forms of supererogation which are correlated or continuous with duty, and involves Heyd, along with Schumaker, in some avoidable complexities.

⁴⁷ Feinberg, 1960-61, p. 276.

⁴⁸ Trianosky notes that the "straightforward connection" between duties and supererogatory actions becomes clearer if we imagine a fully virtuous person who fulfills both what duty prescribes, and what it recommends. See Trianosky, p. 31.

⁴⁹ See Feinberg, 1960-61.

⁵⁰ "...the moralities of supererogation, those of the saint and the hero, do not contradict the norms of right and justice: they are marked by the willing adoption by the self of aims continuous with these principles but extending beyond what they enjoin." *A Theory of Justice*, p. 479.

Before outlining a more adequate account of supererogation, we close this survey of the most recent development of the issue by examining the influential views of Joel Feinberg concerning two types of supererogation. Like other supererogationist writers, Feinberg believes the traditional classification of moral actions cannot account for supererogatory acts. According to Feinberg, traditional philosophy had uncritically accepted institutional or jural “house rules” as models for the understanding of all counsels of wisdom and all forms of human worth.⁵¹ The error of this approach was to treat non-institutional facts as special institutional facts. Meritorious praiseworthy actions which are not duties at all must be considered separately from extensions or over-achievement in the carrying out of specific duties.

In attempting to distinguish between “legal-like institutional” factors, and “non-legal-like, non-institutional” factors, Feinberg explains that the former involve straightforward quantitative explanations, whereas the latter do not. Someone who works long hours well beyond what is normally expected for the job is going “beyond his duty.” The second sense of supererogation is quite separate from the concept of duty, as in doing a favour. Some favours, especially those which involve sacrifice, “are not only other than duty, but also more than duty.”⁵² The basic distinction is between “oversubscription” or “duty-plus” and what he terms as “meritorious abnormally risky non-duty.”⁵³ The oversubscription form of supererogation lends itself to institutional contexts, as it involves a distinct way of conceiving merit which is appropriate to schools,

⁵¹ Feinberg, 1960-61, p. 276.

⁵² *ibid.*, p. 279.

⁵³ *ibid.*

corporations and military units which are governed by rules. The second type of supererogation is free of a rules context, but is fundamentally concerned with a person's merit or worth in general, all things considered; it thus allows individuals to be identified with specific virtues such as trustworthiness, tact, hardiness and so on. But there are no rules, he says for comparing virtues or vices or counsels of wisdom. Human worth is a reflection of "what one is, not a simple function of what one does," and in the end, accounting for "final human worth, all things considered"⁵⁴ is partly a question of character, quite separate from institutional contexts of over-achievement.

Feinberg's distinctions make clear that there is a major difference between institutional and non-institutional types of supererogation; there are no risks worth mentioning in the first type whereas the second type involves abnormal risks. This account is suspect in that any effort in an institutional situation to do more, or achieve more, inevitably stimulates resentment, which in an institutional context is relatively efficiently transferred back to the over-achiever in terms of psychological costs. It is appropriate to note that high profile supererogatory actions of the non-institutional type may indeed prove abnormally risky. But not all of them are abnormal in this respect. It is rather more likely that all supererogatory actions carry increased costs or risks of some kind and that such costs or risks do not increase from zero to abnormal levels when, as it were, one leaves the military for civilian life.

⁵⁴ *ibid*, p. 287.

Our review of the principal efforts made by contemporary philosophers to define supererogation or supererogatory acts, and to justify them by some form of validation through moral experience has isolated several elements which, taken together, constitute a reasonably clear concept of what is meant by these terms, or similar ones, including expressions such as “above and beyond the call of duty.” We restate the contention that a supererogationist approach accords more closely to the testimony of moral experience, that it more adequately accounts for supererogatory acts than other systems, and that it is clearly understandable as a separate category of moral action. The principal ideas which lie very close to the heart of the concept were for the most part identified by Schumaker: acts the performance of which are conjunctively (1) neither forbidden nor required by morality, (2) good, and (3) done primarily for the sake of someone other than the agent. To these features, we have added the notion of personal cost or risk to the moral agent. We also contend that to these features should be conjoined two additional characteristics, namely gratitude and praiseworthiness. Supererogatory actions involve both intention and execution and if the action itself is successful, the natural response is one of gratitude; if the action is unsuccessful, it still engenders admiration.

We have chosen to limit our discussion to features and characteristics, rather than to definition for the following reasons: i) the issue is under fairly active study in current philosophical re-search and new elements highlighting various features or characteristics have appeared regularly since 1958, and ii) although the terms “supererogation” and “supererogatory action” have no real denotative significance, they abound in connotative meanings. Given actions, in other words, may be said to be

supererogatory or not. Of given actions themselves, it cannot be said that they are intrinsically supererogatory, if only because performance of given actions require a measure of intentionality, an independent assessment of which, while inherently problematic, nonetheless colours much dialogue and discussion of moral questions.

Since most supererogationist writers essentially agree that supererogation involves the three principal features identified by Schumaker, I will confine the remainder of this discussion to a) the feature of personal cost or risk, and b) the characteristics of engendering gratitude, or admiration, and praiseworthiness.⁵⁵ The reason for the former is that neither Schumaker nor Heyd recognize the importance of factors involving cost or risk in evaluating supererogatory actions. The issues affecting the questions of gratitude, admiration and praiseworthiness are relevant to the argument because they illuminate some vexing issues. These characteristics are, however, secondary matters. They follow from the features. Together, nonetheless, they constitute an identification of meaning, that is, a depiction or elaborated description, rather than a definition of supererogation.

Costs and Risks

Considerable controversy has attended the discussion of the question of cost or risk, and no clear view has yet emerged, although it would appear that those favouring the acceptance of cost or risk have the stronger case.

⁵⁵ Mellema does argue that certain supererogatory actions such as acting on principle alone have no consequences, thus contradicting Schumaker's third condition, but as noted above, this seems untenable.

It is at least intuitively acceptable that actions “above and beyond the call of duty” require personal costs or involve personal risks.⁵⁶ We normally do admire conduct which exceeds the call of duty, at least partly because of the amount or degree of personal cost involved, irrespective of the actual results achieved. Heroes do attract public attention and admiration not only because they show bravery in prevailing over long odds against them, but also because they dare to take big risks against opponents not incidentally in their way, but determined to thwart their actions or even crush their very existence. Urmson’s argument dealt more with heroes than with saints, and much of the subsequent literature has followed this trend, but the parallel is still clear enough: saints become revered as such because they provide some sort of benefaction or triumph over adversities through some form of persecution or sacrifice up to and including self-sacrifice. To be sure, the characteristic of personal cost excludes trivial supererogatory acts which might involve low cost, such as ‘paying one’s share’ in contributing to civic charities, or even to supporting events at schools attended by one’s own children and such like. Actions of this kind are no doubt dutiful and possibly expensive in a restricted sense, but are not borne at direct personal cost or risk in the same manner as supererogatory action involving unlimited, non-measurable, unanticipated cost would be. We might say that such acts involved a certain cost, but that they were not “costly” in a personal sense. Supererogatory acts, by contrast, are personally costly in that they are immune to conventional

⁵⁶ Cf Bonhoeffer's warnings about “cheap grace” and “the cost of discipleship.” Like some other religious groups, Jewish Pietists in medieval Germany were strongly attached to the doctrine that “the greater the difficulty in performing an action, the more praiseworthy it is.” See Kellner, p. 88.

limits on obligation of the type which Fishkin would impose;⁵⁷ they are performed but with a cost, sometimes a very high cost, often leading to sacrifice and risk without guarantees; they are actions whose authors have waived conventional notions about doing good with little or no personal inconvenience, or at low or only minimal risk.

Of course, it is not denied that many dutiful actions also entail personal risks and costs, only that there is no obvious or inseparable connection between the two, and that, in addition, supererogatory acts, if not invariably incurring personal risks or costs, characteristically do so.

But Schumaker rejected this notion as part of his definition. He objects on two grounds. In his 1970 work, he finds that because all moral actions require effort of some kind, "it is therefore otiose to insist that an act must require effort in order to qualify as supererogatory."⁵⁸ Schumaker's second objection, in his 1992 account of imperfect duty refers to the measurement of risk, which he claims does not lend itself to independent assessment.⁵⁹ Schumaker's contention that favours are supererogatory leads him to embrace the notion that certain trivial acts are supererogatory. But this is an uncomfortable position in that it leads to a confusion of the ridiculous with the sublime. It could also lead to the substitution of trivial supererogatory acts in place of duties.⁶⁰ The best

⁵⁷ "Notions of impartiality...press us towards acceptance of general obligations. Notions of individualism require... limits on the moral demands that can be made of each individual - limits such as the cut-off for heroism and the robust sphere of indifference, without which limits, the sphere of negative liberty, where we can be free from interference to so as we please, would lose its value. There would be no realm of permissible free choice, for that part of our life would be filled up with moral requirements and overwhelming moral demands." Fishkin, 1962, p. 170.

⁵⁸ Schumaker, 1970, p. 52.

⁵⁹ Schumaker, 1992, p. 68.

⁶⁰ See Marcia Bacon's remarks about so-called 'yuppie' ethics in Chapter Five above.

way out of this dilemma is to recognize that while all duties may involve cost or effort, supererogatory actions both typically and characteristically do so, and furthermore, such high personal or psychological costs for moral agents is a feature of supererogatory action. Heyd also argues against including notions of personal cost or risk such as self-sacrifice in his definition, partly because he agrees with Schumaker that fulfillment of normal duties requires effort and that not all cases of sacrifice are supererogatory. An additional explanation is that to include risk, effort, sacrifice or personal cost in the definition would weaken Heyd's contention that supererogatory acts are both correlative and continuous with duty: it is important therefore that he retain the concept of trifling or minor supererogatory actions which would be excluded from a definition that includes personal cost as a condition.

Feinberg, it will be recalled, defined one type of supererogation as "meritorious, abnormally risky non-duty."⁶¹ He also termed it "super-risky."⁶² Peterfreund also claims that supererogatory actions "involve considerable risk or sacrifice for a person."⁶³ He rejects the validity of the notion of trifling acts of supererogation, observing that non-trivial supererogatory actions may be infrequent but at least there are acknowledged occurrences of them. In a later paper, he notes that a supererogatory act goes beyond the limits of duty "because it generally involves greater risks and sacrifices than those normally associated with the performance of a duty."⁶⁴ Walker notes that supererogatory acts are

⁶¹ Feinberg, 1960-61, p. 276.

⁶² *ibid*, p. 282.

⁶³ Peterfreund, 1976, p. 290.

⁶⁴ Peterfreund, 1978, p. 54.

characterized by “great effort or sacrifice.”⁶⁵ Rawls observed that actions become supererogatory “when the individual displays its characteristic virtues of courage, magnanimity and self-control...”⁶⁶

Let us now review in detail the question of cost or risk as a feature of supererogatory action as critical discussion about it has evolved most recently. Elizabeth Pybus has argued in neo-Kantian fashion that the classical tripartite classification of moral actions is correct, and that it still holds despite the claims of supererogationists against it. She contends that supererogatory acts must be considered as morally obligatory, and that supererogatory ideals must be considered to be non-moral aspirations. Pybus bases her argument on the notion of moral commendation.⁶⁷ But holding such a view, she stresses, does not commit one to say that all should do similar acts because admiration and praise for such actions is reserved for the attitudes, dispositions and virtues which gave rise to them rather than for the acts themselves.

Pybus was answered on behalf of the supererogationists by Elizabeth M. McGoldrick who defends Urmson against Pybus’s charge that the category of the supererogatory is superfluous and that supererogatory acts can be accommodated adequately under the rubric of duty. She claims Pybus argues that it is indeed a duty to develop the dispositions from which such action spring but that Pybus begs the question she purports to answer

⁶⁵ Walker, p. 17.

⁶⁶ Rawls, 1971, p. 479

⁶⁷ “...if my commendation is genuinely moral, then my genuine act of commendation does commit me to saying that this really is how men ought to be. But if I do have a genuine moral view that this is how people ought to be, then I must think that I and others ought to live up to this and regard those who do not as falling short of the moral standard.” Pybus, 1982, p. 194. “...to say, therefore, that someone is a saint or hero, and thereby to express a moral judgement, is to say that a person has succeeded in being what we all ought to be.” *ibid*, p. 196.

by defining a moral idea as something to which we all as a matter of duty ought to aspire, thus committing the fallacy of petitio principii.

McGoldrick goes on, however, to offer additional justification for supererogatory action on the basis that “the distinguishing feature of a supererogatory act is that it is performed at extreme risk to one’s own life and well-being.”⁶⁸ Typical supererogatory actions of courage or saintliness, she says, involve people who who “serve others at considerable cost to themselves, and this is important because we are not morally required to make large or life-endangering sacrifices for others.”⁶⁹ McGoldrick stresses the purely voluntary, as opposed to the obligatory nature of such acts and aspirations. She advances a plea for the supererogatory which is more a suggestion than an argument based upon the notion of a ‘gift’ - a free giving, or voluntary relinquishing of something to another, and a relinquishment of a right and bestowal of it upon the recipient. The saint and the hero, she says, bestow on others the free gift of their service, voluntarily relinquishing their right to personal aspirations, goals and interests in order to preserve the well-being of others. Now, some such actions may indeed be foolhardy or servile, but “some are inspired by unselfish love and benevolence:...as befits the highest moral ideal, it must be done voluntarily and out of love.”⁷⁰

Pybus defended herself against this challenge in a second article by saying that as agents making moral judgements, we cannot distinguish between the points of view of spectators and agents. “I cannot judge something to be the morally praiseworthy pursuit of an end without

⁶⁸ McGoldrick, 1984, p. 525.

⁶⁹ *ibid.*

⁷⁰ *ibid.*, p. 528.

judging such pursuit to be something I should, other things being equal, engage in.”⁷¹ She claims that her argument for the obligation to acquire the virtues needed for living a morally good life turns on the indistinguishability, in practice, of agent and spectator viewpoints. She claims Kant’s tripartite classification of moral actions still holds, against the attacks of Urmson and other supererogationist writers such as McGoldrick, but that “we need to loosen up [Kant’s] theory to leave room for the virtues within the good will.”⁷²

The most recent contribution to this debate is by Russell A. Jacobs, who assesses the arguments of both Pybus and McGoldrick as inadequate. Jacobs contends that Pybus’s argument is circular, as well as counter-intuitive in maintaining that “there are no cost-imposed limits on moral obligation - largely because to commend morally is to commit oneself to emulate.”⁷³ He argues that high personal costs of obligations in reality conflict with, rather than intensify obligations. But Jacobs is also critical of McGoldrick, claiming that she fails to prove that people are never required to make large sacrifices for others. It is as false to say, according to Jacobs, that high cost always overrides duty, as it is to say that high cost never overrides duty. “It is much more reasonable to say that in some cases the high cost of doing our duty cancels the duty, while in other cases an action remains our duty despite the high cost of doing so.”⁷⁴ Jacobs concludes that if obligations which are overridden by high cost are still performed nonetheless, they are supererogatory.

⁷¹ Pybus, 1986, p. 527.

⁷² *ibid*, p. 529.

⁷³ Jacobs, p. 98.

⁷⁴ *ibid*.

Gratitude

Like forgiveness, gratitude is an internal act which allows of external expression. Because it allows of a greater range of external expression than forgiveness, it is studied as a feature of moral psychology. And as it is an internal act more directly linked to outward expressions than forgiveness, it lends itself to evaluation through the expression more than in terms of the condition of its appearance. But as in the case of forgiveness, the conditions of its appearance are of greater interest than its outward expressions. Philosophical inquiries into the issue are rather less than commonplace, but still are not entirely without currency in contemporary writing. Our interest is occasioned by the fact that it is a characteristic of supererogatory actions that they inspire gratitude. Heyd, for example states that "...gratitude is always appropriate in the case of supererogatory behaviour."⁷⁵ Heyd adds that it is the gratuitous, completely voluntary nature of a supererogatory act which makes it worthy of gratitude. Kant went even further in his esteem for gratitude and the actions and virtues which occasioned it. In the *Metaphysical Principles of Virtue*, he makes gratitude a "sacred duty whose violation can destroy the moral incentive for beneficence in its very principle."⁷⁶ Even if gratitude is always appropriate, it is not always forthcoming. Hugh T. Kerr has reminded us that the gospels record that only one of ten lepers cured by Christ returned to express gratitude.⁷⁷ Because of this voluntary aspect on the part of the recipient, and the fact that gratitude is a consequence of a

⁷⁵ Heyd, p. 140.

⁷⁶ Kant op cit p. 119.

⁷⁷ Kerr, p. 152.

successfully completed supererogatory action, it would be incorrect to include this phenomenon in any definition of supererogatory action, or even to mention it as a distinguishing feature of supererogatory actions. It remains however, an important characteristic. Let us now look more carefully at recent philosophical attempts to analyze the notion of gratitude. The most significant contributions seem to have been made by Richards, Berger and Walker and we shall deal with them in this order.

In his discussion of the principles of supererogation, David A.J. Richards posits the 'subsidiary principle of gratitude.' Following the contractarian model of moral agency, Richards contends that "contractors will agree that persons who have voluntarily profited from the goodness of others, are to do something by way of gratitude in advancing the interests of their benefactors."⁷⁸ In line with Kant's idea that gratitude is significantly related to the idea of beneficence, Richards advances a technical statement of the principle of gratitude which is non-enforceable. Gratitude underlies and explains many of the moral aspects of the relations of friendship and love between mature people and entails, according to Richards, a subsidiary principle of kindness.

He classifies 'obligations of gratitude' into three types.⁷⁹ As with other aspects of Richards's approach to supererogatory acts, his account of gratitude introduces the idea of obligation, thus vitiating the voluntary nature of the act. Gratitude becomes in cases (a) and (b) at least, matters of justice. In addition, gratitude shown in response to supererogatory actions

⁷⁸ Richards, p.209.

⁷⁹ "(a) that shown by children to care for their parents in old age, (b) that shown to people who help us when we are in distress, and (c) that shown to others who show kindness beyond the call of duty; in such cases, gratitude has as its purpose the encouragement of acts of beneficence." *ibid*, p. 209-11.

is interpreted largely in terms of its beneficial effects on the development of public morality, or in another word, its utility.

Fred A. Berger has also attempted an analysis of the concept of gratitude, but using non-contractarian terminology. Berger notes that there are three principal conditions under which gratitude is due: (a) the value of the benefit to the recipient, (b) the degree of sacrifice or concession made by the grantor, and (c) the voluntary nature of its undertaking. Gratitude is not expressed unless the action was done “in order to help us.” If the act was done only because the actor chose the lesser of two evils, or without any knowledge or thought that it would benefit us, or solely because it might bring him benefits, there is no debt of gratitude, because nothing was done to help us. Berger concludes that gratitude is most clearly seen as the requital of benevolence. Furthermore, he notes that gratitude cannot be demanded. To do so reveals the act of help or gift as not having been a show of benevolence at all, but something done to gain favour.⁸⁰

Sincere, adequate expressions of gratitude, he notes, are demonstrations of a complex of reciprocal beliefs, feelings and attitudes, of which the essential features are recognition, non-instrumentality and moral community.⁸¹ Sometimes gratitude is more than a simple expression of

⁸⁰ Tom Wolfe describes how the “favor bank” works in New York City: “everything in the criminal justice system in New York ...operates on favors...Everybody does favors for everybody else. Every chance they get, they make deposits in the favor bank...a deposit in the favor bank is not a quid pro quo. It’s saving for a rainy day...if you’ve been making your regular deposits in the favor bank, then you’re in a position to make contracts, that’s what they call big favors, contracts.” Wolfe, p. 384-5.

⁸¹ “a. the recipient shows he recognizes the value of the donor’s act - that is, that it was an act benefitting him and done in order to benefit him; b. the recipient shows that he does not regard the actor as having value only as an instrument of his own welfare, and, c. a relationship of moral community is established, maintained or recognized consisting of mutual respect and regard. Reciprocation makes the relationship two-way.” Berger, p. 17.

feeling, but requires demonstration. All supererogatory acts can be marked by either expressions or demonstrations of gratitude, depending upon an appreciation by the recipient of the degree of risk or cost incurred by the initiator of the action.

A.D.M. Walker is critical of both these approaches. He notes that Richards's account largely deals with gratitude in terms of justice, in the manner of classical Greek philosophy but that Richards fails to give an accurate interpretation of it because of his concern with calculations of moral balance; Richards also fails to allow adequate scope for sincerity in the sphere of gratitude. This is a serious charge, as Godwin has noted because "sincerity is prized above all other virtues"⁸² for its utilitarian purpose.

Walker finds Berger's approach more satisfactory, as it adequately allows for an account of sincerity in matters of gratitude, but he nonetheless judges it to contain several weaknesses. It manifestly fails to account, he claims, for acts of gratitude which do not imply benefit or help to the person whose acts give rise to gratitude in the mind of another. Walker provides a rather awkward illustration of the high-principled wife of a hanging judge, who entreats her husband, before he sets off for the assizes, to temper justice with mercy for her sake. "Can she not be grateful to him for acceding to her entreaties even though she does not benefit from them, and is not helped by his behaviour?"⁸³ These and other difficulties with the interpretations of Richards and Berger prompt Walker to offer his own account which he claims avoids such problematic formulations.

⁸² Godwin, p. 152.

⁸³ Walker, p. 43

Walker situates gratitude, which he sees as focussed on individuals, within the wider notion of 'gratefulness,' which is much more diffuse in focus. One can be grateful, in a general sense for benefits received, tangible or intangible, without being necessarily grateful to someone for anything. Gratefulness, he says, is similar to thankfulness, in that one can be thankful, without being thankful to anyone in particular about any specific thing. Gratefulness is sometimes an emotion, sometimes an attitude, but invariably expressed in response to a received good or favour.⁸⁴ He surmises that gratefulness is shadowed by a parallel but negative desire for revenge.⁸⁵

Gratitude, according to Walker is, then, gratefulness with a personal focus, concerned with the notion of a grateful return based on a sincere motivation to favour one's benefactor, accompanied by good will. Gratitude is therefore concerned with actions constituting the return a grateful person wishes to make, and actions required by the connection between gratefulness and good will. Gratitude provides in this way the motive for an act of supererogation in return. Walker actually states that an act of gratitude is supererogatory because the action is not one which the grateful person has a duty to perform. In other words, one supererogatory action of generosity, for example, gives rise to another by way of the grateful return, even if, *faute de mieux*, no opportunity to do anything by way of favour is possible to respond to a given benefactor.

⁸⁴ "Favour contrasts with what we may demand as of right, with what another has a duty or obligation to provide for us, with what we are entitled to expect and can take for granted. We are grateful therefore for what we see as exceeding our rights and entitlements." *ibid.*, p. 48.

⁸⁵ "The grateful man wishes to favour another because he has been favoured as the vengeful man wants to inflict harm on another because he has been harmed himself." *ibid.*

But to claim that supererogatory actions necessarily imply gratitude would be correct only if, following Walker, all supererogatory actions had consequences, real or intended, and therefore beneficiaries, real or intended. But it is impossible for a putative beneficiary to express gratitude for a supererogatory action which does not bring about positive consequences - as a failed rescue attempt, for example. We do, on the other hand, thank people who fail, for trying to help. In such cases where supererogatory actions are mounted out of "high-minded" motives, as Peterfreund observed, we may not find that an appropriate response to such an action is one expressing gratitude, but one of admiration for the effort, the labour, the cost or degree of risk invested in an enterprise which was nonetheless defeated by reasons unrelated to personal commitment. It would be correct, however, to say that the appropriate response to supererogatory actions with positive consequences is indeed gratitude, and admiration in all other cases. The point here is that supererogatory actions are characteristically performed with intended consequences and beneficiaries, not merely to manifest virtuous conduct and that it is not meaningless to recognize supererogatory acts which have neither consequences nor beneficiaries by expressions of gratitude, although it would be more usual to refer to such acts in terms of admiration and praiseworthiness.

Praiseworthiness

It now remains to be shown that supererogatory acts are praiseworthy in accordance with the features and characteristics so far identified. But praiseworthiness is a complex notion, comprising a number of constituent elements of both philosophical and psychological importance.

As is known from experience, not all things worthy of praise receive it. Furthermore, considerable subjectivity characterizes the determination of praiseworthiness of a dutiful act, but considerably less in the determination of supererogatory acts as praiseworthy. It is our contention that if moral acts answer to the features of such actions as we have posited, they will be definitely worthy of praise. Some observers may most admire the voluntary aspects of given supererogatory acts, others may find much to praise in the gratuitous generosity or self-sacrifice involved in their execution; others may respect these actions for the excellent results they achieve, or perhaps only because of the great effort and show of human spirit they manifest, even in the absence of any results at all. We shall attempt to demonstrate that supererogatory actions are praiseworthy in terms of the following factors: i) meritoriousness, ii) that they are restorative of relationships, iii) that they are typically, but not invariably, exceptional in some manner, and iv) are related to character formation.

The issue of meritoriousness is frequently discussed in the literature on this subject. Heyd, it may be recalled, included the notion of meritoriousness in the fourth stage of his definition.⁸⁶ Feinberg also mentioned the meritorious nature of supererogatory acts.⁸⁷ An act is said to be meritorious if it earns merit for the agent, according to Heyd, who notes that the difference between merit and praise is that the former is more objective.⁸⁸ Heyd here seems to be arguing for an objective form of

⁸⁶ Heyd, p. 115. An action is supererogatory if... "it is done voluntarily for the sake of someone else's good, and thus is meritorious."

⁸⁷ Feinberg, 1960-61, p. 276.

⁸⁸ "...being related to theoretical criteria of desert, rather than to contingencies like social interests of individual people's praise inclinations which determine praise and condemnation" Heyd, p. 139.

praise which all would recognize as merit. But if this is the case, the initial perception of acts as praiseworthy is "lexically prior" to their meritoriousness. In addition, meritoriousness has significant institutional connotations which apply more naturally to 'the interest of the trumpet,' to borrow an idea from Bentham, than to 'the interest of the heart.' If actions are considered meritorious, they are also praiseworthy, whereas not all praiseworthy actions would be necessarily considered meritorious, in the absence, for example of procedures which would ensure the theoretical objectivity which Heyd seeks. Furthermore, a meritorious act really needs to be successful in terms of actual results, and it is hard to see how an act can be meritorious on the basis of merely intended consequences, as Heyd claims. It may, however, be supererogatory quite independently of any consequences. Supererogation is therefore illustrated and exemplified by meritorious actions. Not all supererogatory acts are meritorious, although they are all praiseworthy. The contention that they are meritorious only if performed for the sake of someone other than the moral agent is rejected.

The perception that supererogatory actions serve useful purposes has hardly been lost on utilitarian writers. But nowhere has the concept of supererogation found greater utility than in the restoration of personal relationships. Kurt Baier has explained his theory of primary and secondary rules of morality on the basis that the former are essentially concerned with matters of justice, whereas the latter are concerned with those larger areas of human experience where considerations relating to rights and duties bring no help. Baier makes the case that the observation

of “rules of supererogation” restores moral equilibrium.⁸⁹ Similarly, Heyd refers to the “social cohesion resulting from supererogatory behaviour,”⁹⁰ whereas we recall that Horsburgh stated that the supererogatory paradigm of forgiveness is in some way restorative, as is it intended to heal a breach in a relationship. Resolution of social or personal conflicts is often only possible when one party waives its rights to exercise certain privileges or voluntarily undertakes to yield or cede more than required by the provisions of precedent, positive law, custom or traditional practice. Such actions are generally effective in resolving crises, and, if they are unburdened by no trace of either servility or compulsion also typically ensure through the generation of good will that their recurrence is avoided.⁹¹ They are also thought to be instrumental in bringing about fundamental change in society.⁹²

The question as to whether supererogatory actions are praiseworthy because they are also exceptional is a controversial one, recurring frequently in the literature. It cannot be given a convincing unconditional answer. Several supererogationist writers, including Schumaker and Heyd, acknowledge trivial acts of supererogation, such as favours, while others do not, pointing to peak moral performances as both typical and

⁸⁹ Primary moral rules, he argues, define “what it is, morally speaking, to mind one’s own business, to preserve the moral equilibrium. Secondary moral rules, such as rules of supererogation indicate what is to be done by whom when the balance sheet has been upset.” Baier, p. 205.

⁹⁰ Heyd, p. 166.

⁹¹ Schumaker notes that if one cannot fulfill one’s duties of generalized reciprocity (imperfect duty) by merely doing one’s duty, the only way to do it is by doing things that would be supererogatory. See Schumaker, 1992, p. 67.

⁹² “The Declaration and Principles of a Global Ethic” approved by the 1993 Parliament of World Religions drafted by Hans Küng made this point very clearly: “Earth cannot be changed for the better unless the consciousness of individuals is changed first...without risk and sacrifice, there can be no change in our situation.”

characteristic of supererogatory acts. There exists the confusing possibility that given acts might be interpreted in different lights, appearing one moment supererogatory and the next dutiful depending on all manner of circumstance.⁹³ Some philosophers have described supererogatory paradigms as if they were almost some sort of process, rather than discrete acts of individuals. Of course, if a moral agent sets out to perform supererogatory acts for his or her own sake, or out of what Heyd terms “moral self-indulgence,” then he or she is likely to forfeit a measure of moral value. Holy men may indeed be tempted by martyrdom;⁹⁴ sainthood is really not much of a practical goal - it may happen, but if one seeks it out, it is more likely not to occur for the simple reason that something other than principal benefit to the recipient of saintly actions was intended - thus defeating the supererogatory nature of the action.

It is clear that some degree of overlap, or at least some shading between perfect duties, imperfect duties and supererogatory acts resists resolution by analysis and that some actions can be considered under more than one category. Mill recorded how acts of unusual virtue could become duties over time and sociologists have documented how the importance of gift-giving in primitive societies comes to be accepted as expected, even obligatory behaviour over time.⁹⁵ A long-term improvement in public morality was, after all both envisioned, and to some extent achieved by the

⁹³See *ibid*, p. 76-68.

⁹⁴This theme is explored by T.S. Eliot in *Murder in the Cathedral*.

⁹⁵See esp Titmuss, *op cit*. The historical record however also indicates that contrary movements may occur on occasion. Just as Shaftsbury's actions to eliminate slavery would be considered supererogatory at the time, and only dutiful in today's climate of opinion, moral codes can also regress, so that actions by Hutus against Tutsis which would have been considered prohibited in 1993 become merely offensive (and in some quarters indeed dutiful) in 1994.

Victorian utilitarians.⁹⁶ Supererogationists seem always to be left, however, with undeniable and irrefutable evidence to the effect that there are cases of undoubted outstanding moral excellence, which they normally and correctly categorize in terms of language variously relating to heroic or saintly actions.⁹⁷

Many philosophers either deny the significance of exceptional behaviour or sidestep the issue by folding such acts into duties, and downgrading the idea of duty.⁹⁸ But when behaviour above the average is observed, it is normally praiseworthy, as “above average” behaviour. Now some supererogationists do argue that supererogation is not a matter of just above average behaviour, but exceptional behaviour, and that average conduct is basically in line with more or less adequate fulfillment of perfect obligations, that above average conduct would correspond to a good selection of imperfect duties, but that beyond that, some moral actions surpass anything of the sort that could be expected in terms of imperfect duty. Other supererogationists would respond however, that both the areas of perfect and imperfect duty offer ample scope for acting supererogatorily. This is precisely what Feinberg has in mind by “over-subscription” or “duty-plus” - an over-scrupulous attention to duty. All

⁹⁶ Sidgwick, in particular, was a great champion of higher education for women. Mill's activities on behalf of women's liberation are better known.

⁹⁷ Hegel wrote that “mere rectitude, from the standpoint of moral philosophy seems somehow inferior, something beyond which still higher demands must be made of oneself and others because the craving to be something special is not satisfied with what is absolute and universal; it finds consciousness of peculiarity only in what is exceptional” *Philosophy of Right*, para. 150. Rawls also noted that “the moralities of supererogation represent the higher forms of moral excellence” TJ, p. 484. Aurel Kolnai, it will be recalled, referred to the supererogatory paradigm of forgiveness as “the epitome and culmination of morality.”

⁹⁸ Frank Chapman Sharp argues that we come to expect a certain average conduct in human beings and that it is wrong for a person to do more than his duty because to do so he would have to sacrifice his own greater good for the lesser good of others. Mary Mothersill ventures the comment that duties are “merely minimum performances.”

supererogationists are likely to agree with Feinberg's assertion that supererogation is one area of moral experience that is open to all moral agents - whether by refraining to act in a manner that is still consistent with requirements of duty, although radically exceeding them, or by doing something so remarkably altruistic and self-sacrificial that it has no relationship to duty at all.

Finally, we note that supererogatory acts can be considered praiseworthy because they reflect the good character of the moral agent. It is a major theme in philosophy, and related frequently to moral education. Urmson's example of the valiant grenadier was in fact anticipated to some extent by Aristotle who endeavoured to show that bravery is the virtue to be discerned between the extremes of foolhardiness on one hand and cowardice on the other, and that its sudden appearance in a man is essentially a matter of character.⁹⁹ But Kant, Hegel and Rawls also teach that virtue is primarily a matter of character.

The link to moral education is a practical concern of Kant and Rawls, and many other philosophers of course, and it begins with Socrates and Plato.¹⁰⁰ It is of note that for Kant, the value of role models in moral psychology must be approached with care, as the moral value lies not in the great deeds of these heroic figures, but only their inward obedience to the moral law as interpreted by them in their stations in life.

⁹⁹ "...it is thought the work of a braver man to be fearless and undisturbed in sudden alarms than to be so in those that are foreseen; for it must have proceeded more from a state of character, because less from preparation; acts that are foreseen may be chosen by calculation and rule, but sudden actions must be in accordance with one's state of character." NE, II, 8,4.

¹⁰⁰ See esp Republic, II, 377, Kant's Methodology in the Critique of Practical Reason and Rawls on moral learning, TJ, p. 490 ff.

Now, it may be argued that acts of supererogation, rather than entirely praiseworthy, may actually be partially blameworthy, as either foolish or servile. A good account of how supererogatory acts are to be distinguished from foolish acts is given by Curtis, supplemented by Mellema (1991). Curtis holds, with Aristotle, that “foolish acts of morally inspired self-sacrifice are not morally good, however noble the motives of the agent.”¹⁰¹ Acts of this sort cannot be supererogatory if they are foolish in this sense: the valiant grenadier would be foolish to fall on a grenade in order to protect government property. For Curtis, supererogatory actions are situated on a continuum of actions with perfect duties at one end and foolish actions at the other. If the cost or risk of an action is of considerably less significance than the end of the action, then it is required, but if the cost or risk is considerably more significant, then the action can be termed foolish or unwise. The difference between foolish acts and supererogatory acts concerns the importance to be attached to self-interest: “it is foolish to give precedence to moral reasons for acting over against the reasons of self-interest for refraining from action.”¹⁰² Where the moral reasons for acting are clearly seen to be trivial, in comparison to the reasons of self-interest for refraining, this interpretation holds that it is foolish to take action.

Curtis finds that supererogation is possible in situations where neither the moral reasons for acting nor the reasons of self-interest against it are found to be clearly overridden: “a man who does something for a moral reason which has roughly equal weight with his countervailing

¹⁰¹ Curtis, p. 313.

¹⁰² Mellema, 1991, p. 164.

reason of self-interest has performed a supererogatory act."¹⁰³ These are praiseworthy, morally good actions which are not obligatory to perform.¹⁰⁴

With this analysis in mind, let us examine whether supererogatory acts are not in some way, or in some cases, servile. Can it be argued, in other words, that servile acts of morally inspired self-sacrifice are morally good? I contend that servile acts cannot be considered supererogatory for three principal reasons. Firstly, a distinction needs to be observed between servility and obedience. Heyd, it will be recalled, recognized Hume's 'monkish virtues' of obedience, along with chastity, as supererogatory paradigms because of the moral value such actions hold for inspiring moral actions in others. But obedience in a moral sense comprises not only obedience to others in legitimate positions of authority, but also to the moral law regarding duties to oneself. Just as there may be perfect duties to oneself, as Kant contended, the concept of supererogatory acts directed to oneself rather than only to others merits consideration as a valid justification for excluding servile acts from the category of supererogatory acts.

Secondly, because servility seeks to accomplish certain praiseworthy ends, such as personal security and advancement through the use of blameworthy methods, such as flattery or deceit, it is subject to criticism that the use of unjust means is justified in the advancement of just ends.

¹⁰³ Curtis, p. 315.

¹⁰⁴ Note that St Paul calls upon Christians to be fools for Christ (See 1Co 4:10). For Mellema, this may mean that those concerned only with the realization of their own self-interest might have no hesitation in describing many or most acts of supererogation as foolish.

Kant's argument against the moral value of servility includes this account of the distinction between unworthy means and worthy ends.

Thirdly, we note the extensive objections of Kant against servility, as contrasted with his concept of humility. Kant held it to be a perfect duty to oneself as a moral being to avoid lying, avarice and servility.¹⁰⁵ He holds that the dignity or absolute inner worth of the moral agent exacts a reciprocal respect for oneself and for other rational beings in the world. Failure to honour oneself or display respect for oneself leads to servility. Kant distinguishes between true humility - which is the consciousness and feeling of one's moral worth in relation to the law - and false humility, which is used to seek and acquire favour from others. He sees it as a perfect duty to oneself to stand up for one's rights and avoid servility. He does not mention that it may also be a perfect duty to others to stand up for one's own rights. But this may be morally valuable in that it effectively prevents others from having to do so on our behalf, as it were.

The fundamental value of self-esteem conflicts with the methods of servility in "belittling one's own moral worth merely as a means to acquiring the favour of another through hypocrisy or flattery."¹⁰⁶ Kant is blunt to the point of insensitivity on this point. Flatterers, he says, only differ in degree from beggars, and one who makes himself a worm cannot complain if afterwards people step on him.¹⁰⁷ While insisting that one should assert one's rights and avoid serving as another person's "lackey," he also went so far as to teach that favours which one could do without should not be accepted.

¹⁰⁵ See *Metaphysics of Morals*, pp. 230-232.

¹⁰⁶ *ibid*, p. 231.

¹⁰⁷ *ibid*, p. 232.

Schumaker and others have found that these views are unnecessarily severe. Although they can hardly be faulted in a strict rules-based context concerned above all with the letter of the law and the enactments of perfect duty, they accord poorly with Kant's views regarding the spirit of the law, given the importance he ascribes to wide imperfect duty.

But it can still be contended that certain classes of people, such as women, or low-caste Hindus, for example, might feel conditioned into performing acts of self-sacrifice on a systematic basis. Such classes of people, it could be argued, naturally give more than they receive and, furthermore, that these acts could be both servile and supererogatory. The best response to such an objection in accordance with the views advocated above regarding the nature of acts of supererogation is that if such purportedly servile, self-sacrificial acts are performed out of love or respect, that is, following from a morally good intention, such acts are indeed supererogatory. But if they are done out of a genuine principal concern for the good of others, neither are they servile. Mothers as a class, that is, mothers qua mothers, may indeed be conditioned to perform supererogatory acts, as indeed may be other groups dedicated to the alleviation of human suffering. But if a morally good intention behind the action is lacking, as in Kant's analysis of servility, then such acts have no positive moral value.

But groups of people who act in accordance with Kant's definition of humility, that is as obedient to the moral law, are not servile. That is, they do not seek favours of others by belittling their own dignity or self-respect. Such groups may indeed give more than they receive, but their sacrifices are not servile because they seek to gain no favour for which they could not also address a valid appeal. When taken in the interests of others, such

actions are morally good, in terms of their intention and execution, neither obligatory nor forbidden, and done at cost or risk to the moral agent, i.e. to the group as a whole or to individual members of the group. As such, they engender gratitude or admiration and are genuinely worthy of praise.

We return to the description of acts of supererogation with which this chapter began, noting that we have advanced a two stage formulation of features and characteristics, namely that acts of supererogation are, firstly i) morally good, in terms of their intention and execution, ii) neither obligatory nor forbidden, and whose omission is not blameworthy, iii) done voluntarily for the sake of a good beyond the moral agent, and iv) done at risk or cost to the moral agent; and secondly, that they engender gratitude or admiration and are praiseworthy. We have shown how this formulation has drawn upon the most recent work in moral philosophy on this subject, and that the formulation at which we have arrived represents the work of many contemporary scholars who have specialized in this type of ethical theory. Not surprisingly, there is a strong current of opinion in the literature that the concepts developed in this regard are in some sense novel, in that traditional philosophy had somehow neglected these ideas. But it would be imprudent to reach a hasty judgement about this matter.

One little known seventeenth century philosopher has captured virtually all of what is enclosed by these various efforts at description and definition, in his analysis of humanitas. Samuel Freiherr von Pufendorf states in his compendium on moral and political theory *De jure naturae et gentium* that 'humanity' is found in a "...lofty and splendid degree when a man of his own good will and bent, from his own generosity, or from pity for another man's condition, does something for him without return, at considerable cost or labour to himself, whereby the other is aided in his

difficulties, or else some considerable advantage is rendered him..." Such acts afford men an opportunity to secure the greatest praise, if they have been properly meted out by a generous and prudent mind."¹⁰⁸ "The counterpart of beneficence is a grateful mind, by which he who is the recipient of the benefit shows that he received it, is kindly disposed to the giver because of it, and seeks an opportunity to return its equivalent, as far as he can."¹⁰⁹ "A man does a work of humanity not for himself, but for the sake of him who receives a kindness."¹¹⁰

The importance of the modern natural law theorists has been undervalued by recent philosophical research. But it is clear from the foregoing that Pufendorf and other figures of this school have much to offer contemporary discussion of current philosophical questions. Chapter Three outlines the significance of these thinkers for the development of the concepts of imperfect duty and supererogation. The following chapter assesses the views of philosophers who oppose the notion that supererogatory actions are possible.

¹⁰⁸ ING, p. 373.

¹⁰⁹ *ibid.*, p. 374.

¹¹⁰ *ibid.*

CHAPTER TWO

SUPEREROGATION AND CRITICAL THINKING

This chapter examines the claims of supererogationist writers in the light of the two comprehensive moral doctrines which have had the greatest influence on contemporary thought - variations on consequentialist and deontological theories.¹ It will be shown that both traditions are strongly anti-supererogationist in orientation, but that both contain elements of understanding of supererogatory paradigms. The views of classical utilitarian theorists such as Godwin and Bentham, supported by contemporary theorists including Peter Singer and Christopher New will be revealed as essentially anti-supererogationist in orientation, i.e. inclined to reformulate all statements about supererogatory actions to statements about duties. The chapter discusses other utilitarian theorists, such as Mill and Sidgwick, who are less hostile to the doctrine of supererogation and reviews the claims of negative utilitarianism which seems to allow for a limited category of supererogatory action in the need to alleviate pain and suffering.

The chapter also shows how Kantianism has been held antipathetic to "heteronomous" doctrines which stand outside the concept of duty, how Kant's reputation as an anti-supererogationist merits justification and how it has been tested by contemporary scholars. The exposition finds that the

¹Hare refers to the "Kantian-utilitarian method" as "critical thinking." See Hare in Singer, 1991, p. 461.

view advanced by Urmson, Chisholm and Eisenberg, to the effect that there is no room in Kant's theory for supererogation, is substantially sound, and that there are good reasons to regard Kant's exclusion of supererogation as a significant feature of his ethical system.

Radical Anti-Supererogationists

The early utilitarians were strongly anti-supererogationist in their outlook. William Godwin, in particular, can be considered a "radical anti-supererogationist."² Godwin took particular pains to stress that individual happiness is absolutely of the same value for all individuals and that there is therefore no reason to prize one's own happiness over that of any other moral agent. Deeply impressed by the doctrines of equality which emerged from both the Reformation and the French Revolution, Godwin strove to establish principles of morality on strictly rational, non-emotional lines. These convictions led him to the controversial conclusion about saving the life of a celebrated benefactor (Bishop Fénelon), or a person of lesser overall utility (the Bishop's valet), on the basis of utility alone, even if the valet had been Godwin's own father or brother.³ Godwin does not address the issue of whether Bishop Fénelon would have risked his life to save his valet or indeed whether the valet would have done so for the bishop. For Godwin, the choice was to favour utility at the expense of affection. Opposition to this stand at the time was predictably vigorous, but Godwin gave no ground to soft-heartedness; "the end of virtue is to add to the sum of pleasurable sensation. The beacon and regulator of virtue is

²Cooper, p. 164.

³See Godwin, p. 70. It was apparently believed at the time that Godwin's father and his brother were notorious drunkards.

impartiality, that we shall not give that exertion to procure the pleasure of an individual, which might have been employed in procuring the pleasure of many individuals.”⁴ Godwin also specifically excluded the first and, according to Schumaker, most typical supererogatory paradigm when he stated that it is impossible to confer upon any man a favour and that one can but do him a right.⁵

Pleasure for Godwin is part of that which makes up the good, which also includes the means by which pleasure is secured. “Evil is a general name, including pain, and the means by which pain is produced.”⁶ But we are to decide upon their merits in the same way as we would in deciding the merits of inanimate substances. “The turning point is their utility.”⁷ Although he recognizes the importance of moral capacity in an interesting manner, Godwin is perfectly clear about the importance of results. “Intention is of no further value than as it leads to utility.” Similarly, he says duty is “...that mode of application on the part of an individual which contributes the best possible application of his capacity to the general benefit; duty is uniform and requires of us that best appreciation in every situation that presents itself.”⁸

Not surprisingly, just as Godwin eliminates supererogation as a category of moral action, by maximizing the strength of duty, he also denies that offenses are possible by showing that it cannot be the duty of anyone to do anything detrimental to the general happiness of all. “There

⁴Godwin, p. 493.

⁵See Godwin, II, ii.

⁶ibid, p. 79.

⁷ibid, p. 83.

⁸ibid.

cannot be a more absurd proposition, than that which affirms the right of doing wrong.”⁹

Godwin’s treatment of certain types of moral actions, i.e. those based upon and motivated by sincerity and benevolence, is of interest to supererogationist theorists because he claims that these actions are intimately connected with the general dissemination of innocence, energy, intellectual improvement and philanthropy. Sincerity is prized above other virtues because “...once introduced into the manners of mankind, {it} would necessarily bring other virtue in its train.”¹⁰ But sincerity itself can be suspended, exceptionally, whenever a manifest evil arises from disclosing the truth.

In a short passage on cooperation, Godwin assesses that quality of supererogation which has the effect of resolving conflict and restoring relationships but rejects it as an operational moral principle because it gives injury to personal development. Since the proper method for hastening the decline of error is to excite every man to think for himself, “...everything that is usually understood by the term cooperation, is, in some degree, an evil...If I be expected to eat or to work in conjunction with my neighbour, it must be either at a time convenient to me, or to him, or to neither of us. We cannot be reduced to a clock-work uniformity.” Hence it follows that “...all supererogatory cooperation is carefully to be avoided.”¹¹ In its place, Godwin substitutes an idea of managerial improvement.¹²

⁹ibid, p.88.

¹⁰ibid, p. 192.

¹¹ibid. p. 301.

¹²“When we recollect the complicated machines of human contrivance, various sorts of mills, of weaving engines, steam engines, are we not astonished at the compendium of labour they produce? Who shall say where this species of improvement must stop?” *ibid.*

Godwin's call to the judgement, indeed the omnipotence of reason is clear enough, but there are instances when his treatment of it, particularly in relation to feeling, emotion and passion are not as straightforward as is his appeal to rational principles of inquiry. He states in conventional form that it is the function of reason to assess actions independently of emotional bindings and that the requirement of impartiality demands the full exercise of the faculty of reason. At the same time, he argues that "...reason is nothing more than a collation and comparison of various emotions and feelings."¹³ even though such feelings cannot be arbitrary, or inappropriate to the question at issue.¹⁴

Hector Munro, in his account of Godwin's moral philosophy, explains how feelings can be used as the basis of moral reasoning provided we have significant knowledge about the way in which we perceive them. Munro gives an example: "I may readily agree that it is a bad thing that millions of Asiatics should be starving and that I ought to do something about it. But in practice I probably won't... But now suppose that an Asiatic comes and starves on my doorstep. It seems reasonable to say that the sight of his suffering touches my emotions as the mere abstract knowledge of them does not."¹⁵ Knowledge, he says, becomes perfect when emotion is brought forward to rational consciousness.

Godwin's thorough-going utilitarian approach retains some contemporary favour. Peter Singer has strengthened the concept of absolute equality of individual needs in such a striking fashion as to even

¹³ibid, p. 250.

¹⁴Allan Gibbard notes in support of this notion that the key to human moral nature lies in coordination of thought and feeling. See Gibbard, p. 26.

¹⁵Munro, p. 31-32.

question the very distinction between duty and the virtue of benevolence, which was never questioned by Godwin. Singer contends that "...if it is within our power to prevent something bad from happening, without thereby sacrificing anything of comparable importance, we ought, morally, to do it."¹⁶ Singer rightly notes that the uncontroversial appearance of this principle is deceptive because it could fundamentally change society if acted upon in a reasonably consequent manner. On the basis of impartiality, following Godwin, and expanding on Monro's principles of universalizability and equality, Singer argues that we cannot discriminate against some people (e.g. thousands of famine victims in Bangladesh) simply because they may be far away from us, or we from them. Nor does the principle make any distinction between cases "...in which I am the only person who could possibly do anything and cases in which I am just one among millions in the same position."¹⁷ Whether few or many people respond to genuine appeals for emergency assistance, the strength of the obligation to do so is in no way lessened.

He rightly notes that this formulation of our moral requirements upsets traditional moral categories. By reducing charity or at least the most recognizable forms of it to duties of one kind or another, Singer is then forced to contend that all of us are in some manner obliged to be moral heroes. In fact, he willingly espouses this view, notwithstanding its obvious counter-intuitive implications. "It follows that...we ought to give money away rather than spend it on clothes which we do not need to keep us warm. To do so is not charitable or generous. Nor is it the kind of act

¹⁶Singer, 1971, p. 235.

¹⁷ibid, p. 232.

which philosophers and theologians have called 'supererogatory' - an act which it would be good to do, but not wrong not to do. On the contrary, we ought to give money away, and it is wrong not to do so."¹⁸

Supererogatory paradigms become for Singer matters of duty, although he does not claim that there are no charitable acts. In fact, it is less clear that Singer is arguing the philosophical primacy of the duty of charity than he is arguing against the notion that an act of charity takes place when a man "...living at the level of affluence which most people in developed nations enjoy gives money to save someone else from starvation."¹⁹ Singer does not suggest abolition of the distinction between duty and charity altogether, but does not exclude the possibility that it may be redrawn elsewhere. He suggests, without providing any supporting argument, that the line may be redrawn, possibly on the criterion of making people happy - i.e. one might have a duty to make other people as happy as possible, but it might not be wrong not to do so.

Singer distinguishes between a relatively weak and a relatively strong statement about preventing suffering. The strong version given above, which Singer claims to be correct, would indeed seem to require all moral agents to reduce themselves to the marginal level of utility in order to provide continued benefit to those who suffer. He even cites Thomas Aquinas in support of this view. But he also provides a weaker version of the principle as follows: "...if it is in our power to prevent something bad from happening without thereby sacrificing anything morally significant, we ought, morally, to do it."²⁰ Even so, a vigorous application of this

¹⁸ibid. p. 235.

¹⁹ibid.

²⁰ibid.

principle would, as he clearly recognizes, slow down the consumer society to such a stage as to endanger its very existence, and so reduce the capability of moral agents to provide the support needed by the sufferers.²¹ While Singer accepts conventional supererogatory paradigms as possessing moral value, he simply denies that they are in any way supererogatory, merely that they are obligatory.

Another anti-supererogationist approach is provided by Christopher New who extends Singer's argument one step further by contending that it is in fact a duty for those who can do so to become saints and heroes. "Have we not all a duty," he asks, "to try to become saints and heroes, i.e. to try to reject the pull of selfishness and fear as much as we can?"²² New's somewhat alarming conclusion is in the affirmative. New defends utilitarianism from Urmson's challenge by claiming that the supererogatory becomes the obligatory in the following way:

- A. It is a fact that we do encourage people to be saintly and heroic.
- B. Why do we do so if we do not think they ought to be so?
- C. If we do think they ought to do so, is it not a duty to do so?

Heyd claims that New's argument is invalid because he uses 'ought' in B in the "commendatory" sense, and in C in the "prescriptive" sense. New's approach is also rejected by Peterfreund who claims that New's use of the term 'duty' is far too broad, and that by extending duties of benevolence to cover supererogatory actions, he has made duty a "vague and useless concept."²³ Supererogatory actions are not performed, notes

²¹Singer implies that the only utility of clothing is to provide warmth. If clothing were in fact provided on this criterion alone, it would be natural to expect rather more suffering than less in the clothing industry.

²²New p. 181.

²³Peterfreund, 1976, p. 291.

Peterfreund, to promote more good than would result from doing one's duty, but rather "to exceed the sacrifice normally involved in the doing of a duty."²⁴ The problem with such theories is not only that they are too vague, but rather that they promise too much. Bernard Williams notes that "the demands of utilitarianism for maximum welfare production are boundless. There is no limit to what a person might be doing to improve the world, except the limits of time and strength."²⁵

Like Godwin, Bentham also provides an anti-supererogationist account of moral action. Although Bentham's theory of utility strictly circumscribes the concept of duty so as to exclude supererogatory actions, he nonetheless recognizes a considerable variety of supererogatory paradigms in his account of pleasures of reputation and sympathy. In the table of "springs of actions" which is contained in the 1843 edition²⁶ of his *Introduction to the Principles of Morals and Legislation*, Bentham addresses squarely the issues of heroism and saintliness, in a manner which might have surprised those who would support Urmson in his claim that these issues have generally been neglected by philosophers. For Bentham, there are many types of pleasures and pains. Among the former must be included what he terms pleasures of reputation - corresponding to the "interest of the trumpet" as he says, and pleasures of sympathy which correspond to the "interest of the heart." Under the so-called "trumpet" pleasures, he lists "heroicalness" in addition to honour, conscience, probity, honesty, integrity and rectitude. Corresponding to the pleasures of the "heart," he cites kindness, loving-kindness, (sic), tenderness, compassion,

²⁴ibid.

²⁵Williams, 1985, p. 77.

²⁶This is not reproduced in the 1970 edition.

sincerity, mercy, forbearance and kindheartedness, among others, which he lists under a heading of "eulogistic" usage. Despite recognition of such supererogatory paradigms, he views their value strictly in terms of their utility in bringing benefits of reputation or sympathy to others. Ethics, he notes, is "the art of directing men's actions to the production of the greatest possible quantity of happiness."²⁷ Saintliness he considers an important component of asceticism which he sees as a barrier to the proper understanding of the principle of utility. Both private ethics and legislation have happiness as their end. Private ethics is divided into two parts - those involving duties to oneself and those regarding others. All duties other than self-regarding ones are correlated with rights which are indistinguishable, he says, from "powers." Insofar as a person's happiness depends upon his own behaviour, the discharge of that duty is named "prudence." Duties to others are in turn divided into negative and positive approaches. A neighbour's happiness, he observes, "may be consulted in two ways: (a) negatively, i.e. by forbearing to diminish it, and (b) positively, by studying to increase it."²⁸ Negatively, the discharge of such duties is termed "probity": positively it is termed "beneficence."

But what motivating force do these principles have in everyday life? Bentham explains that the reasons for seeking the welfare of one's neighbour are all to be decided upon by individuals themselves in light of their own personal circumstances, but that there are two main motivating forces: (a) "the purely social motive of sympathy or benevolence," and the "semi-social motives of love and amity and love of reputation." The

²⁷Bentham XVII, 2. 1970, p. 282.

²⁸ibid, p. 205.

motive of sympathy will act in accord with his sensibility whereas the other motives will be conditioned by “the strength of his intellectual powers, the firmness and steadiness of the mind, and the characters of the people he has to deal with.”²⁹

As for conflicts between the two motives, i.e. whether for example a nobleman ought to recognize a gaming debt of honour to a high-born companion of his amusements or to acknowledge a co-existing claim of benevolence to compensate a humble tradesman, Bentham says they cannot be simply resolved and “seem to admit of great dispute.”³⁰ These difficulties in no way affect the strength of his commitment to his principal thesis that all matters affecting human dispositions, such as motives to any action, will be judged good or bad according to their effects in augmenting or diminishing the happiness of the community. Noble motives are therefore of no assistance in determining the worth of a given action. Motives, for Bentham, matter for judging character, but not in judging the rightness of actions.

Now, supererogationist writers generally claim the contrary. Peterfreund, for example, explains that “noble motives” do indeed lead moral agents to undertake supererogatory acts. The issue of motives and intentions is of considerable interest in this connection. Sidgwick was particularly concerned about it, as shall be shown. Peterfreund claims that motives themselves can be a determining feature of supererogatory actions.³¹

²⁹ibid, XVII, 7.

³⁰ibid, XI, 20.

³¹Peterfreund asks us to imagine that a given physician has only a list of hypochondriac patients who really need little, if any of his care. “Suppose further that he desires sincerely to aid some helpless, plague-ridden natives, at great risk to his life. The

But not all unqualified supererogationists agree that motives are important aspects of supererogatory actions. Heyd takes issue with Peterfreund by stressing that altruistic intentions mark supererogatory acts, but that motivations as such are best left undisturbed.³² Schumaker adopts a similar line, on the basis that psychology has little useful to report about motivation in this respect, a claim matched by Heyd's observation that research which tried to trace the motives of gentiles who sheltered Jews during the Nazi period uncovered a wide range of motives.

John Stuart Mill

Mill's views about supererogation are surprisingly forthcoming on the few occasions when he addresses the issue directly. Mill states in his critique of Auguste Comte's philosophy that "there is a standard of altruism to which all should be required to come up, and a degree beyond it which is not obligatory but meritorious. It is incumbent upon everyone to restrain the pursuit of his personal objects within the limits consistent with the essential interests of others...If in addition to fulfilling this obligation, persons make the good of others a direct object of disinterested exertions, postponing or sacrificing to it innocent personal indulgences, they deserve

duty to his patients would conflict with the act he wishes to do, but the former would pale in significance when compared to the latter. Only a crank would be likely to accuse the doctor of neglecting his duties, if the latter came to the rescue of the natives. Once again, someone might be tempted to argue that his planned action was praiseworthy and supererogatory because more good would result. I maintain that the deed would be supererogatory for an entirely different reason, namely because of his high-minded motives. For, even if he failed to produce any medical benefits for the natives by his performance, we would still admire his noble effort and call it supererogatory." Peterfreund, 1978, pp. 54-55.

³²The motives of feelings which urge one to undertake supererogatory actions "are diverse in character, and not always virtuous. One may act heroically in order to gain fame, to soothe one's conscience (haunted by guilty feelings) or out of moral self-indulgence." Heyd, p. 137.

gratitude and honour and are fit subjects for moral praise.”³³ He adds, as did Sidgwick, that there cannot be too much of such activity, as long as one is not compelled to such conduct by external pressures: he stresses that a necessary condition is the spontaneity of such actions.

Comte, according to Mill, had become accustomed to drawing most of his ideas concerning moral cultivation from the discipline of the Catholic Church, and might have done better to have consulted its apologists regarding the quest for unity and systematization which characterizes Comte’s work. Yet, it is one of the standard reproaches against Catholicism, says Mill, that it has two standards of morality, and does not make obligatory the highest injunctions of Christian perfection for all, but only for some. In rejecting this doctrine for a unifying, systematic approach to Comte’s moral theory, Mill accuses Comte of having “taken a leaf out of the book of the despised Protestantism. Like the extreme Calvinists, he requires that all believers shall be saints, and damns them (after his own fashion) if they are not.”³⁴ Mill’s comments here aptly situate the issue of supererogation for utilitarian theory generally. He notes that “when what was once uncommon virtue becomes common virtue, it comes to be numbered among obligations, while a degree exceeding that which has grown common, remains simply meritorious.”³⁵

Mill accepts the conventional distinction between perfect and imperfect duties, equating the claims of justice with perfect duties and those of morality with imperfect duties. The only example of an imperfect duty he advances is the duty of charity, but he includes what supererogationists

³³Mill, *Collected Works*, Vol X, p. 337-8.

³⁴*ibid.*, p. 338.

³⁵*ibid.*

would term supererogatory actions within the frame of imperfect duties. Like Sidgwick, he concurs with the thought that a minimal standard of morality has considerable utility: "as a rule of conduct, to be enforced by moral sanctions, we think no more should be attempted than to prevent people doing harm to others, or omitting to do such as they have undertaken" i.e. promise-keeping, truth-telling and the like. But Mill adds that "above this standard, there is an unlimited range of moral worth, up to the most exalted heroism, which should be fostered by every positive encouragement, though not converted into an obligation."³⁶

Arguing against primitive utilitarians such as Godwin, Mill tries to show the futility of confounding benevolence and justice, as is done when supererogatory acts are made obligatory.³⁷ Mill also makes it clear that those who, like Singer, would choose to mount an enterprise of similar intent "...will be found to make no distinction between them at all, but to merge all morality in justice."³⁸ But Singer's enterprise is not necessarily defeated by Mill's cautionary remarks. It is Singer's point that in situations of great distress affecting very large numbers of people, actions which might have been once considered supererogatory do in fact become political imperatives for the world at large and therefore matters of justice. Imperfect duties in this way become perfect ones.

Mill's well-known account of moral action is infused with the notion of moral improvement. While man's selfish tendencies will remain

³⁶ibid, p. 339.

³⁷"...if a moralist attempts, as some have done, to make out that mankind generally, though not any given individual, have a right to all the good we can do to them, he at once, by that thesis, includes generosity and beneficence within the category of justice. He is obliged to say, that our utmost exertions are due to our fellow creatures, thus assimilating them to a debt." Mill, *ibid*, p. 247.

³⁸ibid, p. 248.

stronger over the short term, “they cannot be overpowered, they can only be overtaken and surpassed by altruism.”³⁹ This altruism is based on the sympathetic feelings which share man’s nature with selfish ones. Morality depends upon the former, not the latter, as the primitive utilitarians believed. Sympathy is the weaker of the two feelings, but it widens with experience to include altruistic impulses, aided by reason, which permit access to greater happiness.⁴⁰ Mill well understood the value of self-sacrificial actions done for the greater good of others. He recognizes that they have merit, but are not duties, “which can be prescribed only as expedient to advance the general conditions of human happiness.”⁴¹ “The strong feelings of selfishness do not have a greater sanction because of their original superiority in strength; the ultimate victory of altruism will be moral, for it will make the greatest happiness of the greatest number the normal, even if acquired, end of behaviour in civilized man.”⁴² Moral improvement is therefore possible, but gradual, and its completion a matter linking and transcending generations. Mill himself set much of the agenda for such improvements with his many campaigns in favour of domestic political reform and social betterment, in particular his attacks on slavery and the subjection of women. But these campaigns were well-thought out and planned in advance, so can hardly qualify as meritorious as outlined above, given that they conspicuously fail the condition of spontaneity.

³⁹Robson, p. 137.

⁴⁰“Those are only happy (I thought) who have their minds fixed on some object other than their own happiness; on the happiness of others, on the improvement of mankind, even on some act or pursuit followed not as a means, but itself as an ideal end.” See Lerner, p.88.

⁴¹Mill *Collected Works*, Vol XV, p. 762.

⁴²Robson, p. 136.

Taking note of the open-mindedness of Mill to the whole subject of supererogation, Roger Hancock goes so far as to argue that Mill has in fact fulfilled Urmsen's challenge to account for a class of acts (heroism and saintliness) which are non-obligatory and beneficial. Hancock refers to Mill's private correspondence to demonstrate this thesis. In a letter to George Grote, Mill wrote that utilitarian doctrine is quite in line with the Christian doctrine of loving one's neighbour as oneself, considering that utilitarians would refer not to the feeling or sentiment of love, but to a perfect ethical impartiality between the moral agent and its neighbour. Mill then expresses agreement with the (now lost) views of his correspondent by saying that they are consistent with "recognizing the merit, though not the duty, of making still greater sacrifices of our own less good to the greater good of others, than the general conditions of human happiness render it expedient to describe. This last distinction, which I do not think inconsistent with the expressions about perfection attributed to Christ, the Catholic theologians have recognized, laying down a lower standard of disinterestedness for the world and a higher one for the 'perfect' (the saints); but Protestants in general have considered this a Popish laxity and have maintained that it is the duty of everyone, absolutely to annul his own separate existence."⁴³ Hancock has indeed indicated an opinion of Mill's which seems to accord less than satisfactorily with standard utilitarian doctrine on benevolence, but it also seems unlikely that Mill intended in this passage to establish a new class of moral actions in addition to the obligatory, the permissible and the prohibited.

⁴³ibid, p. 762-3.

Mill recognizes value in supererogatory actions, seeing them as means to higher ends.⁴⁴ Utilitarianism recognizes the power of sacrificing one's own greatest good for the good of others. It refuses only to admit that sacrifice is a good. A sacrifice which neither increases nor tends to increase the sum total of happiness it considers as wasted.⁴⁵ But Mill is also clear that adequate moral theory needs a concept of virtue. Indeed he records in the "Autobiography" that his father impressed upon him from an early age the significance of the "choice of Hercules," i.e. choosing virtue, rather than happiness, as a long term personal goal in life.⁴⁶ In choosing the path of virtue over the road to happiness, Mill also chose the way which leads towards recognition of supererogatory actions. But he remains a sceptic as to the intrinsic goodness of such acts, stating that if a supererogatory act such as an act of self-sacrifice is made in accordance with an end of virtue, rather than happiness, "virtue being better than happiness," it probably would not be made if the moral agent did not believe that his actions would secure immunity of such sacrifices for others.⁴⁷

In the same passage, however, Mill also notes that the state of mind which leads to sacrifices is the highest virtue which can be found in man.⁴⁸

⁴⁴In *Utilitarianism*, he notes that "it is noble to be capable of resigning entirely one's portion of happiness or chances of it; but, after all, this sacrifice must be for some end; it is not its own end..." Lerner, ed. p. 203.

⁴⁵See *ibid.*

⁴⁶See Semmel, p. 1-18.

⁴⁷See Lerner, ed. p. 203.

⁴⁸"Though it is in a very imperfect state of the world's arrangements that any one can best serve the happiness of others by the absolute sacrifice of his own, yet, so long as the world is in that imperfect state, I fully acknowledge that the readiness to make such a sacrifice is the highest virtue which can be found in man." Lerner, ed. p. 203.

Henry Sidgwick

Sidgwick appears to have thought more seriously about the problem posed by supererogation to utilitarian theory than any of the classical utilitarians or Mill himself. Sidgwick was well aware of the difficulties facing utilitarian theory because, as one contemporary writer has described the problem, utilitarians “are forced to categorize many actions as obligatory which would strike most of us as supererogatory.”⁴⁹ Sidgwick recognizes supererogatory paradigms and esteems their value in moral education particularly, but in the end concludes that it is the task of morality to consider the rendering of them as morally obligatory. Sidgwick avoided awkward issues of definition of the basic concepts of “right” and “ought” by claiming that the notions were “too fundamental” to admit of any formal definition,⁵⁰ but that the meaning of these concepts would be clarified by their relation to other notions with which they are connected in ordinary thought. Elsewhere he also refrains from defining duty for a similar reason noting that “it is too simple to admit of a logical definition.”⁵¹ His discussion of supererogation is largely confined to an elaboration of morality as represented by “intuitionism” - a category meant to include consideration of moral issues in which discussion of consequences is either partially or wholly excluded. The ‘intuitionist’ does not judge actions by an external standard at all; true morality is then concerned with intentions and motives, that is, with inner states of mind rather than outward actions. All deontic systems, including Christian morality, are included in Sidgwick’s discussion of “intuitionism.”

⁴⁹Sikora, p. 463.

⁵⁰Sidgwick, p. 33.

⁵¹ibid, p. 587.

Sidgwick distinguishes between motives and intentions on the basis of intended consequences. Motives and intentions can be confused because a motive may be good and the intention bad, or indeed the reverse. Intentions for his analysis are “all the consequences of an act that are foreseen as certain as probable.”⁵² Judgements of right or wrong strictly relate to intentions, not motives.

Now, supererogatory actions fall into the class of actions which Sidgwick termed “excellences or perfections,” to which are also added considerations relating to aesthetic achievement. He refers to “that part of common morality which extends beyond the range of strict duty; that is to the Ideal of character and conduct which in any community is commonly achieved and praised as the sum of Excellences or Perfections.”⁵³ Utilitarianism, he believes, would not find it admissible to hold this view because it would conflict with the utilitarian thesis that it is always wrong and irrational for a man to do anything else than what he believes most conducive to universal happiness.⁵⁴ Still, he acknowledges that it seems practically expedient on various grounds to retain this double vision of felicific conduct. It is expedient to do so for two reasons: (i) some excellences are only partly volitional and therefore not directly subject to the requisites of duty, and (ii) praiseworthy and admirable conduct, which is more than simply merely right is secondarily reasonable on utilitarian grounds because of the stimulus to moral action and improvement it provides to others, if only because utilitarian concepts of right conduct are

⁵²ibid, p. 200.

⁵³ibid, p. 487.

⁵⁴Utilitarianism judges “that conduct is right, objectively right, which will produce the greatest amount of happiness on the whole.” ibid, p. 407.

commensurate with a certain average standard of conduct which is, ipso facto, exceeded by excellent actions.

Sidgwick held a very high opinion of actions which would be termed supererogatory by supererogationists and holds that the admiration of virtuous actions should be encouraged because it leads to happiness.⁵⁵ Heyd remarks that Sidgwick's explanation of the point that supererogatory excellences can be secondarily justified in utilitarian theory because of their effects in stimulating emulation or imitation, or praiseworthy or admirable behaviour, is justifiable only if it could be shown that this kind of utility outweighs that which could be obtained by making such supererogatory acts obligatory. It is possible, after all, that sanctions could be introduced to force people to attain such "excellences" such that the general happiness of all would be greater than maintaining a double standard. Heyd also notes that Sidgwick never tested this theory and suggests that he did not do so because he believed that "the secondary utility of non-obligatory conduct was *intrinsically* better than the primary utility of the overall consequence of that same conduct being obligatory."⁵⁶ But then, as Heyd notes, such an opinion could only be supported by a non-utilitarian argument.

Sidgwick's treatment of the issue of supererogation is sensitive and highly nuanced despite his claim to be drawing only on common sense notions of morality. He presents his views in detailed form in passages dealing with the distinction between duty and virtue and the supererogatory

⁵⁵"For the recognition of excellence in ourselves, and still more in others, is directly an important source of happiness, as it is commonly attended with a peculiar pleasurable emotion of a highly refined kind: and again, the attractive force of the excellence thus exhibited, the desire of imitation which it arises in others, is a powerful stimulus to right action, which we cannot afford to spare." *ibid*, p. 488.

⁵⁶Heyd, p. 87.

paradigm of benevolence. Sidgwick admits that there are indeed excellent actions which are not commonly called duties and which are generally judged to be praiseworthy, “as for a rich man to live very plainly and devote his income to works of public beneficence.”⁵⁷ This would appear to be an undisguised reference to the story recounted in all three synoptic gospels of the rich young ruler.⁵⁸ But he stresses that the lines of distinction “are very doubtfully drawn on either side; for we certainly call a man virtuous for doing what is strictly his duty when he is under strong temptation to omit it; and we can hardly deny that it is, in some sense, a man’s duty to do whatever action he judges most excellent, so far as it is in his power.”⁵⁹

Without providing a definition of duty, he states that it is equivalent generally to right conduct, involving a moral impulse.⁶⁰ Describing virtue, however, presents greater complexity and difficulty because some virtues, such as generosity, may be realized in acts which are obviously wrong and others, such as courage, may be exhibited in wrong acts known by the agent as such. In the end however, Sidgwick settles with the description of virtue as “qualities exhibited in action judged to be right.”⁶¹

How then is one to account for the fact that in assessing the moral conduct of others, we commonly realize that virtuous conduct may go beyond the limit of what we regard as a person’s duty: and even when there seems no doubt that the virtue beyond duty was within the power of the individual in question? Sidgwick gives two reasons why this may be so.

⁵⁷Sidgwick, p. 218.

⁵⁸See Lk 18: 22, Mt 19: 21 and Mk 10: 21.

⁵⁹Sidgwick, p. 218.

⁶⁰ibid, p. 217.

⁶¹ibid.

One explanation is that different degrees of knowledge are involved. Sidgwick notes that he can explain why he may subscribe a donation to a hospital for example, but that he lacks knowledge as to why someone else in similar circumstances might refuse to do so. A second explanation is that we normally praise acts above a given standard of behaviour and find blameworthy acts below such a standard. But he finds considerable difficulty with such a method, observing that the line of distinction between duty and virtue is vague and continually varying as the level of morality rises in a community. Sidgwick's optimistic views of moral improvement and social progress correspond with those of earlier utilitarian writers. He stresses the difficulties in establishing justification for supererogatory acts, noting that "common sense is not prepared to say how far it is right or good that we should sacrifice any worthy aim such as the cultivation of knowledge or any of the fine arts - to the claims of philanthropy or popular affection; there seem to be as generally accepted 'institutional' principles for determining such a choice of alternatives."⁶²

Virtue, for Sidgwick, has two identifying qualities: it is manifested in voluntary actions and it is linked to emotion. Without will, such excellences could be called gifts, talents or graces, but not virtues; without emotion, excellence is lacking.⁶³ Similarly, his account of virtue includes supererogatory aspects as qualities attributed to the mind or character of the agent and conceived to be only manifested in feelings and acts.⁶⁴

⁶²ibid.

⁶³The affection, if practical and steady, seems a higher excellence than the most beneficent disposition of the will, as resulting in more excellent acts." Sidgwick, p. 220.

⁶⁴"...but as we only know it through such manifestations, in endeavouring to make precise our conceptions of the particular virtues, {we} were necessarily concerned with the emotions and volitions in which they are manifested, because even in order to fulfill our

Sidgwick's discussion of the supererogatory paradigm of benevolence is also relevant to our inquiry, particularly as he contrasts it with the requirements of justice. His discussion is reminiscent of the distinction made by the modern natural law philosophers between perfect and imperfect duties.⁶⁵ Duties of justice are strictly defined, whereas duties of affection are "indefinite." He accepts that beyond the region of duties, the non-performance of which constitutes grounds for censure, "there seems to be a region of performance where the services rendered cannot properly be claimed as debt, and blame is not felt to be due for their non-performance."⁶⁶ He notes the difficulties such a notion poses to common sense morality, namely, whether service rendered over and above what strict duty is thought to require is virtuous, and whether affection itself is an excellence worthy of admiration and attainment. The difficulties encountered in such an exercise led Sidgwick to postulate, in a famous passage, a statement of duties which we owe to our fellow men. Sidgwick's list is, in its essentials, a statement of imperfect duties.⁶⁷

duties correctly we are on occasion obliged to act instinctively, we need the benefits of character and disposition shaped by virtue." *ibid.*

⁶⁵"We commonly treat the spheres of external duty corresponding respectively to each as mutually exclusive, assuming that at any rate the special function of benevolence begins where justice ends." *ibid.*, p. 240.

⁶⁶*ibid.*, p. 241.

⁶⁷Show kindness -

to parents, children, spouse and kinsmen

to those who have rendered services to friends

to neighbours and countrymen

to examples of our own race ("more than to black or yellow men")

to our country

to all men with whom we may be brought into relation involving "slight services, such as can be rendered without inconvenience"

to all men who are in distress or urgent need and have a claim for special kindness.

He divides this list into four categories as follows:

1. those not voluntarily chosen - kindred, neighbours
2. those voluntarily chosen - friends

This elaboration of a list of generally accepted, minimally required duties approved by common sense is of particular relevance to utilitarian doctrine which holds that each man ought to consider the happiness of any other as theoretically of equal importance with his own, and only of less importance practically, in so far as he is better able to realize the latter. But there is also a 'lower and shallower view' of the services which we are held to be strictly bound to render to our fellow men generally. Note that this view corresponds largely to perfect duties comprising only two elements:

(i) a negative duty to abstain from harm, and to accept to make due reparations for harm done,⁶⁸ and (ii) a positive duty to render services involving no personal sacrifice, or if so, one of "trifling" importance in relation to the benefits gained. In addition, he adds a minor condition to be 'useful to society,' recognizing that 'manifest drones' might well satisfy points (i) and (ii).⁶⁹ For Sidgwick, the virtue of benevolence extends without limit beyond the somewhat indefinite limit of perfect duty. Excess is not thought possible in doing good to others, he believed, together with Mill, unless it leads to neglect of other perfect duties.

Sidgwick is consistent, in all places where he attempts to deal with supererogatory concepts, to stress the difficulties involved in making clear distinctions. Just how far in excess one need proceed to pass from duty to

3. those from whom services are received to whom gratitude is to be shown, and

4. those in need who deserve pity.

⁶⁸Note that this corresponds precisely with what Pufendorf terms "absolute duties" See ING III, I, 1.

⁶⁹See Sidgwick, p. 251. Cf Pufendorf ING III, I, 2: "...it appears that those who fail to develop themselves by some honest occupation, sin against the law of nature, and are of no use to themselves and a burden to others..."

virtue is left purposefully vague. He does note, however, that the concept of “liberality” is helpful in this regard. The proper share of liberality lies in fulfillment of the indefinite duties of benevolence, but it is also in the “borderground” or the ‘grey zone’ between justice and benevolence. It is distinguished by a readiness to provide full satisfaction of all customary expectations, even when indefinite and uncertain, as well as by a willingness to avoid conflict over remuneration by paying more and accepting less than would be governed by custom alone. Similarly, in discussing the supererogatory paradigm of gratitude, he states that “we do so like to exact a measure of duty; a certain excess falling short of extravagance seems to be what we admire and praise.”⁷⁰ And, he adds, when we try to define the notion of ‘equal return,’ obscurity and divergence begin and we are unable to decide or calculate the amounts needed to repay gratitude.

One unusual consequence of utilitarian theory noted by Sidgwick is the notice he gives that it may be right to do and privately recommend, under certain circumstances what it would not be right to advocate openly.⁷¹ Sidgwick claims that the need for such an esoteric doctrine would vanish in an ideal community of enlightened utilitarians who might be able to live by refined and complicated rules that admitted exceptions for everyday practice not permitted to others. Bernard Williams refers to this disagreeable aspect of Sidgwick’s theory as “Government House

⁷⁰Sidgwick, p. 258-259.

⁷¹“It may be right to teach openly one sort of persons what it would be wrong to teach to others; it may conceivably be right to do, if it can be done with comparative secrecy what it would be wrong to do in the face of the world and that even if perfect secrecy can be reasonably expected, what it would be wrong to recommend by private advice or example.” *ibid*, p. 484.

utilitarianism,” indicating the suitability of this theory for the paternalistic structures of nineteenth century colonialism which were familiar to Sidgwick and his contemporaries, especially Mill.⁷² Williams adds that Sidgwick himself made explicit that the “utilitarian conclusion would seem to be that secrecy may render an action right which would not otherwise be so should itself be kept comparatively secret; and similarly, it seems expedient that the doctrine that the esoteric morality is expedient should itself be kept esoteric.”⁷³ Such a doctrine of ‘two-fold’ truth has rather less attraction for contemporary moral theorists than it might have for specific patterns of belief, but is quite incompatible with a supererogationist point of view for which relatively well-established and commonly accepted standards of conduct are required, as Heyd would say, for purposes of ‘demarcation.’ This curious doctrine is, therefore, very much at odds with the third major stipulation about moral theory advanced at the beginning of this thesis, namely, that it be easily formulable and susceptible to application and interpretation by ordinary moral agents.

In the end, despite his obvious recognition of supererogatory principles and sympathetic handling of the implications and challenges they present to classical utilitarian theory, Sidgwick considers supererogatory acts as obligatory ones.⁷⁴

As has been shown, the principal approach of utilitarianism is essentially anti-supererogationist, i.e. it is inclined to reformulate all

⁷²See Williams, 1985, p. 108-9.

⁷³Williams, *ibid*, Sidgwick, p. 383.

⁷⁴“On the whole then, I conclude that while we praise and admire enthusiastic Benevolence and Patriotism, and are touched and charmed by the spontaneous lavish outflow of Gratitude, Friendship and domestic emotions; still what governs us as moralists...is the ascertainment of the right rules of distribution of services and kind acts, insofar as we consider the rendering of these to be morally obligatory.” Sidgwick, p. 245.

statements about what supererogationists would normally term supererogatory acts to statements about obligatory acts, that is, to duties. The standard objection to this contention, as pointed out above, is that it requires too much. Utilitarianism requires that “if an action is the one among the alternatives open to the agent that will maximize the good, then the agent is obligated to perform the action regardless of the sacrifice involved.”⁷⁵ But McConnell notes that this applies only to saintly or heroic actions, whereas, as some claim, supererogatory acts can also be trifling⁷⁶ and that as such under utilitarian theory, they can actually be wrong.⁷⁷

Negative Utilitarianism

A relatively new school of utilitarian thought - negative utilitarianism - is less troubled by the problem of supererogation than the mainstream of classical utilitarian writing. Negative utilitarianism recapitulates a theme of the modern natural law philosophers about the ‘absolute’ duty to avoid hurt by holding that “the relief of pain takes priority over and has greater urgency than the promotion of pleasure.”⁷⁸ This line of thought has found few supporters in recent years, but it is significant for supererogationists in that it specifically recognizes the value of supererogatory actions in relieving the sufferings of others. Walker argues that classical

⁷⁵McConnell, p. 36.

⁷⁶Chisholm, Heyd and Schumaker all hold this view which we believe to be mistaken, as explained in Chapter Two.

⁷⁷McConnell’s example is as follows; it is agreed that doing a favour for Jones, such as buying him a book which he would enjoy, would procure, under the circumstances, the best consequences for Jones at minimal cost to McConnell. But should an opportunity be presented to buy a book for Smith, which he would enjoy less than Jones would enjoy his book, then if McConnell were to buy the book for Smith, rather than Jones, his action would be considered wrong, according to utilitarianism, but counter to the ways we actually talk and indeed behave.

⁷⁸Walker, p. 424.

utilitarianism fails to account for asymmetries in ethics; he claims our obligations to relieve and avoid causing pain are much more stringent than our obligations to promote good and avoid curtailing pleasure. It is a duty to relieve pain whenever we are in a position to do so, but it is much less plausible to argue that we should never miss an opportunity to provide pleasure to others. Heyd holds that negative utilitarianism is the most satisfactory version of utilitarian theory, in that there is room for supererogatory acts both in relieving pain and in contributing to pleasure. Both possibilities are specifically available, according to Walker.⁷⁹

K. E. Tranøy expands the relationship between the injunction to maximize pleasure and the injunction to minimize pain by claiming that the latter injunction “is logically prior to the former, that the latter is unrestricted and unconditioned in a way the former is not, and that in case of conflict - which is clearly possible - the injunction to minimize pain should take precedence.”⁸⁰ The duty to promote pleasure, he notes, is really of doubtful standing and is at best subject to a great variety of limiting conditions. He bases his argument on an analysis of sufficient and necessary conditions for a number of notions such as pleasure and pain, life and death, health and illness, benevolence and malevolence, right and wrong, and good and evil. In each case, according to Tranøy, many sufficient conditions can be advanced to account for negative notions such as death, or pain, but only a series of necessary conditions, not sufficient

⁷⁹“Sometimes in virtue of a special tie we ought to promote the pleasure of a particular person or group, but often this will have a supererogatory character. By contrast, to relieve and avoid causing pain is behaviour we tend to take for granted. (When it is supererogatory, this is because of the great effort or sacrifice required.) Walker, p. 429.

⁸⁰Tranøy, p. 370.

ones, can be advanced to support to more 'positive' notions. We do have, he asserts, "a very dependable knowledge of how to make anyone miserable, as we have near-perfect knowledge of how to kill or inflict disease.... But we cannot with any comparable degree of confidence say what will make people happy."⁸¹ He notes that because we know so much more about pain, the appeal to reduce it is much more forceful for us than calls to increase happiness. Similarly, he notes, echoing the modern natural law philosophers, the injunction 'don't be malevolent' is prior to, more reasonable than, and more easily complied with, than the injunction 'be benevolent.' A calculus of suffering and pain is possible in a way which a calculus of pleasure and happiness is simply not. It has, after all, been possible to establish procedures in civil societies for dealing with malefactors but no similar system of institutionalized procedures has been attempted to recognize benevolent acts. The largely "negative" prescriptions of the Decalogue also reinforce this point. Tranøy concludes that we can make out an excellent case for duty not to be malevolent, but it is doubtful if we can at all be said to have (in the same sense) a duty to be benevolent, if this is to mean more than a duty to reduce suffering, relieve pain and mitigate evils."⁸²

But Tranøy's analysis does allow for supererogatory action; "our very highest praise and admiration are reserved for those who do actions which are, as we sometime put it- beyond the call of duty - and that would seem to be for those actions which are really good actions. We might indeed apply the term "saintly" to one who shows excellence in combining

⁸¹ibid, p. 358.

⁸²ibid, p. 363.

both sympathy with the sufferings of others and unalloyed joy at the happiness of strangers.”⁸³ Tranøy concludes his analysis of asymmetries in ethics by criticizing the preoccupation of much utilitarian theory with the question of rules - only a few of which are obliging or prohibiting. Such an approach overlooks the much greater range of recommendations and advice, warnings and threats, exhortations and requests, prayers and suggestions which also make up the greater portion of the moral universe.”⁸⁴

Immanuel Kant

Kant presents a strong case against supererogation in the *Critique of Practical Reason*, especially in Chapter III of the “Analytic of Pure Practical Reason” and the “Methodology of Pure Practical Reason.” Of course, Kant never mentions the concept of supererogation per se, but he is concerned throughout his moral teaching with actions and explanations of actions considered by supererogationist writers as referring to supererogatory acts or paradigms. The development of Kant’s theory consists of both a rigorous treatment of the theme of the derivation and justification of the categorical imperative in the *Groundwork* and the second Critique, and a more human-oriented treatment of the same theme in the *Lectures on Ethics* and the *Metaphysics of Morals*. This section reviews the main points of Kant’s opposition to the doctrine of good actions beyond duty, and assesses the significance for Kant’s moral theory of his

⁸³ibid, p. 365.

⁸⁴ibid, p. 369.

denial of the notion of supererogatory action. Chapter Four reviews the Kantian theory of perfect and imperfect duty.

It will be recalled that the categorical imperative is universal; it is the final criterion of all moral actions and the determining ground of the will in respect of all maxims upon which actions are taken. It is practical, that is, it pertains to moral action, not only to theory, and is used by everyone. Duty gives rise to all moral sensibilities, including feelings of satisfaction. Nonetheless, such feelings of satisfaction in having taken actions in accordance with the supreme formal principle of the autonomy of the will are to be encouraged. It is in fact a duty, as he says, to establish and cultivate such feelings of satisfaction, which alone deserve to be called moral feeling. But duty cannot be derived from it; true moral feeling follows from it and is only intelligible in this light. The moral law itself is given as an absolutely certain fact of which we are all aware without reference to any knowledge acquired by empirical means. It has nothing to do with the enjoyment of life. Respect for the law, i.e., the consciousness of free submission of the will to the law, is the sole moral incentive. In his famous apostrophe to duty in the *Critique of Practical Reason*, Kant claims that duty is nothing other than personality - i.e., the freedom and independence from the mechanism of nature regarded as a capacity of a being which is subject to special laws (pure practical laws given by its own reason). The moral law is holy, requiring that persons never be used as means unless they are also treated as ends.

The concept of duty is so large, so all-inclusive as to eliminate all other possible motives and grounds of the will to action as valid reasons for acting, such that it would appear that there is no room at all for actions which surpass duty, i.e. actions of a supposedly supererogatory nature. To

be sure, Kant does not deny the moral validity of actions which even supererogationists would term supererogatory. Rather, he claims that their importance for morality lies only in the extent to which they were taken out of respect for the moral law. How indeed can it be possible to universalize one's maxim and still find yet more ethical "room to move?" Moreover, Kant specifically treats the two paradigms of supererogatory actions as discussed in Chapter One, i.e. volunteering and forgiveness as duties taken out of respect for the categorical imperative. Even acts of love and sympathy, including volunteering, which supererogationist writers generally claim to be supererogatory acts are, for Kant, considered as derivations from subjective principles and hence constitute neither ground nor incentive to act morally. "It is a very beautiful thing," Kant says "to do good to men because of love and a sympathetic good will, or to do justice because of a love of order. But this is not the genuine moral maxim of our conduct...when we presume, like volunteers, to flout with proud conceit the thought of duty and as independent of command, merely to think of our own good pleasure to do something to which we think we need no command."⁸⁵ Such woolly, thinking or blind actions of doing good do not, he states, stand under the discipline of reason. Duty and obligation, rather, are the only names which we must give to our actions under the law.

Forgiveness, it will be recalled, is a key paradigm of supererogatory action for both Schumaker and Heyd, but Kant stated very clearly that the objectivity of the practical laws of reason, i.e., their validity for the will of every rational being, means that forgiveness is a duty. Kant states that

⁸⁵Critique of Practical Reason, p. 89.

someone can take as his maxim not to tolerate any unavenged offense and yet see at the same time that this is only his maxim and not a practical law and that, if it is taken as a rule for the will of every rational being, it would be inconsistent with itself. He also notes that the performance of beneficent acts, another paradigm of supererogatory action according to proponents of supererogation, is in accordance with duty, and not therefore somehow above or beyond it.

Kant contends consistently and persistently that temptations to go beyond what is required by the moral law are subjective and heteronomous. One major error he sees is the tendency to ascribe moral value to actions rather than to the reasons motivating them: “the mind is disposed to nothing but blatant moral fanaticism and exaggerated self-conceit by actions as noble, sublime and magnanimous.”⁸⁶ People given to such actions (which could well include actions considered by supererogationists as supererogatory) are not so much motivated by duty as by considerations relating to their own merit. Motivation is likely to be morally deficient if the agent is moved not by respect for the law but by the desire to achieve merit. Such misplaced dispositions can be pathological, he says, meaning that they are the products of disordered minds. In such a manner of subjective goal-setting, people produce a “shallow, high-flown way of thinking, flattering themselves with spontaneous goodness of heart, neither needing spur nor bridle nor even command, and thereby forgetting their obligation, which they ought to think of rather than their merit.”⁸⁷ For all actions which are praiseworthy,

⁸⁶ibid, p. 19.

⁸⁷ibid, p. 85.

he continues, we must search until we find a law of duty which commands and “does not leave us to choose what may be agreeable to our propensity.”⁸⁸

Even sacrifice as a supererogatory paradigm detached from duty is rejected by Kant, who notes further that “certainly actions of others which have been done with great sacrifice and merely for the sake of duty may be praised as noble and sublime deeds, yet only in so far as there are clues which suggest that they were done wholly out of respect for duty and not from aroused feelings.”⁸⁹ The original text for “aroused feelings” is “Herzensaufwallungen” which conveys a stronger sense of emotion, literally “gushings from the heart” or gushing emotion, than offered in Lewis White Beck’s translation.

Kant writes with power and passion on this point. One might add that he approaches the issue with “Herzensaufwallungen” himself and there can be little doubt about his meaning. It is a savage attack upon those who would go about doing good according to their own private and subjective conceptions of what constitutes goodness, irrespective of the moral law. What such people do may well have moral value, but only as such actions are taken out of respect for the moral law, and not merely in accordance with it. The thought of duty, he adds for good measure, strikes down all arrogance as well as vain self-love; it is the supreme life principle of all human morality. At the end of the *Critique of Practical Reason*, Kant makes it clear that he wishes to exclude any notion that actions outside or beyond duty have moral standing. The pure moral motive, which he says

⁸⁸ibid.

⁸⁹ibid.

is the sole ground of character, can be inculcated in young minds through the use of appropriate teaching methods. The founding and cultivating of genuine moral dispositions, he suggests, can be achieved through the use of Socratic techniques designed to oblige young people to search out the true moral motive in given ethical situations.⁹⁰ Kant gives two examples which clarify his own views about the classification of supererogatory actions. One proposes that virtue is very costly indeed, as he suggests that all manner of suffering and even death itself may lie in the line of duty should, for example, someone have had to hinder Henry VIII in his attempts to rid himself of the presumed innocent but powerless Anne Boleyn. The second example is that of the person whose duty requires him to rescue others from shipwreck, even at the risk of his own life. Kant remarks that the esteem for which we might hold an action will be weakened by the concept of duty to oneself which, as he says, appears to have been infringed in this particular example.

Kant's contention is that such typically noble or magnanimous actions, however meritorious, or even "super-meritorious"⁹¹ they may be, are not to be studied as models for young people. The point is a pedagogical one; it does not so much concern what one ought to believe, as what one ought to teach the young. It is rather the influence of moral principles on the individual as the situation develops in danger, risk and complexity which in turn engenders "admiration, marvelling, veneration and the wish to change places with the model of this meritorious action."⁹² The basic problem is that heroic actions considered in themselves distinct

⁹⁰ibid, see, p. 153.

⁹¹ibid, p. 155.

⁹²ibid, p. 156.

from the moral qualities which led to their accomplishment introduce heteronomous elements such as self-love, or as he says, any “flattering thought of merit.” The gradual cultivation of the faculty of reason will lead to interest in the moral law and thus to morally good actions. Every good disposition can be grafted on self-respect, “for the consciousness of freedom is the best, indeed the only, guard that can keep ignoble and corrupting influences from bursting in upon the mind.”⁹³

It is clear that Kant’s arguments have been considered to be thoroughly anti-supererogationist by supererogationist writers. Our analysis of Kant’s moral philosophy shows that the possibility of a class of actions outside or beyond duty is incomprehensible. Even when it would be appropriate or useful to introduce the concept of supererogation for the sake of completeness or to avoid some obviously counter-intuitive conclusions, such as those which would impose moral heroism as a matter of duty, he issues stern admonitions against presuming to make universal interpretations of what might be good, i.e. undertaking actions which might be considered ‘super-meritorious’ or presume to reflect a superabundance of virtue. Note was also made as to how in some passages his rejection of supererogatory concepts is vigorous, resolute and in at least one passage, done with a show of temperament. It now remains to examine Kant’s arguments with a critical purpose, in order to determine whether the contention that his account leaves no place for a concept of supererogation is supported by modern scholarship.

⁹³ibid, p. 161.

Heyd states that Kant saw supererogation as a challenge to his system, noting that while he did not adopt Luther's views on the matter, he was, nevertheless, strongly influenced by the Protestant reformers in his denial of supererogation. Heyd notes various references in Kant's works to supererogatory paradigms (including forgiveness, sacrifice, volunteering and love), concluding that because of these admissions, Kant is not as rigorous an anti-supererogationist as would initially appear, or at least as he is thought to be by many supererogationist writers. Heyd also claims that Kant's solutions to the problem of rendering compatible the claims of reason for law on one hand and the drives of pietism towards perfection on the other, involve him in two separate operations, both of which render supererogation harmless. In one operation, Kant reduces supererogation to duty, as in the unambiguous obligation to defy a tyrant even at the cost of one's life; in another operation, he extends the scope and meaning of duty to include supererogatory actions. While these sound like two aspects of the same phenomenon, i.e., expanding the concept of duty at the expense of anything beyond it, Heyd distinguishes them on the basis that the former is more anti-supererogationist than the latter. The former view, as McCarty has expressed it, makes saints and heroes "undistinguishable from a moral viewpoint;"⁹⁴ whereas the latter requires us to perform heroic actions in the line of duty. Both lines of reasoning are present in Kant's theory.

The traditional Kantian teaching, that is, the rigorous theory of the *Groundwork* and the *Critique of Practical Reason* is anti-supererogationist, according to Heyd, because the three conditions of moral actions involving (i) obligations, (ii) universalizability, and (iii) duty as a

⁹⁴McCarty, p. 43.

motive, are all separately incompatible with supererogatory actions which must be (i) permissible, (ii) non-universalizable, and (iii) which in fact are done from a variety of motives. Supererogatory actions cannot be obligatory; it is a special feature of such actions that they cannot be commanded or required. Nor can they be applied universally; if everyone were to take risks to the point of losing one's life, this would be self-contradictory in Kantian terms. As for the motives of supererogatory actions, they can in many cases only be characterized by what Kant terms spontaneous inclinations or other subjective criteria conforming more with what he understands as moral "*Schwärmerei*," i.e. enthusiasm bordering on fanaticism, than with ethical behaviour. Kant recognizes that supererogatory actions involve achievement in difficult situations, but he teaches that it is always difficult to perform a moral act when opposed by inclinations.

The second method Kant uses to avoid having to deal with the idea of supererogation is to extend the meaning of duty by dividing it into two parts: juridical duties and duties of virtue. Duties of virtue go beyond justice and exclude legal considerations as reasons for either their commission or omission. Neither supererogatory acts nor duties of virtue can be required or commanded externally. But there can be no room for supererogation if it is perceived as involving no duties at all. By thus extending the concept of duty to include most actions which supererogationists would include as paradigms of supererogation, Kant has adopted what Heyd terms a "more refined way of expressing an anti-

supererogationist view.”⁹⁵ Kant, it will be recalled, specifically treats charity as a duty, as well as benevolence, and also holds that if everyone always acted in accordance with the strict principles of justice, there would be no misery apart from illness and misfortune. Even so, of course, some misery would still exist which would allow the duties of virtue to be brought into application.

Several writers, notably Heyd and Gregor, claim that Kant’s later writings on ethics, particularly in the *Metaphysics of Morals* introduce distinctions which are at least compatible with supererogationist views. Supererogatory actions under any reading of Kant would have to be accommodated somehow within the notion of imperfect duty. But Kant also explains that the closer one brings the maxim of one’s wider duty towards the narrow law, so much more perfect is one’s virtuous action. The more completely, therefore, one fulfils one’s imperfect duty, the more virtuous one becomes.

Heyd concludes his discussion by noting that Kant has been unable to resolve the tension between a deontological theory on one hand and a morality of virtue on the other, and that he oscillated from reluctant recognition to full-scale rejection of supererogatory acts. But this finding is conditioned by recalling that Kant also held virtue to be a matter of character. An interesting contemporary interpretation of Kant’s views on this issue has been elaborated by Robert B. Louden who holds that it is quite incorrect to consider the Kantian system as geared entirely to moral decision-making. There is ample evidence in Kant’s works, notes Louden,

⁹⁵ That is, a way which recognizes the moral value of allegedly supererogatory acts, but does so only on the condition that in the final analysis they are treated as obligatory. See Heyd, p. 49.

that Kant valued character very highly indeed, and that his views on the importance of character serve to strengthen the position of “agent ethics” as opposed to “act ethics” in interpreting Kant’s moral philosophy. The methodology of the *Critique of Practical Reason* attests to pedagogic intention and the *Lectures on Ethics* as well as the *Metaphysics of Morals* provide significant evidence of the importance placed by Kant on character formation. Interestingly, similar concerns are also shared by modern philosophers working within a general neo-Kantian framework, such as Rawls and G. R. Grice.⁹⁶

Kant’s insistence that the only unqualified good thing is the good will is instructive in this regard.⁹⁷ Loudon also notices that the references to strength or fortitude of will in the *Metaphysics of Morals* refer not so much to the ability of accomplishing goals one sets out to achieve, as to the sense of mastery over one’s inclinations and constancy of purpose in achieving self-mastery. Although Kantian virtue is subject to the moral law, Loudon contends that the obedience to rules which Kant requires is not to be interpreted in a narrow-minded pharisaic manner but in a broader, classical sense of living a life according to reason. But the rules which serve as action guides are intended most fundamentally as guides for life as a whole. Furthermore, Kant’s teaching that the ends of dutiful actions, i.e. maxims to pursue general, long-term goals, namely one’s own perfection and the happiness of others, make clear his underlying concern for moral character.

⁹⁶Chapter Three contains an analysis of Grice’s theory.

⁹⁷ “Everything that is not based on a morally good disposition...is nothing but pretence and glittering misery.” From *Idea of Universal History from a Cosmopolitan Point of View* p. 49.

Despite this body of evidence and argument to the effect that a Kantian system is incompatible with a doctrine of supererogation, T.C. Hill has attempted to account for supererogatory acts as a sub-class of acts which fulfill principles of wider imperfect duty, something like a duty of love.⁹⁸ Hill argues that the best candidate for a supererogatory act within the Kantian system would be one which: (a) is commended by the principle of wider imperfect duty ; (b) is motivated by a sense of duty (or, perhaps, respect for moral reasons); (c) is neither forbidden nor required by another more stringent duty and there is at least one alternative that is neither forbidden by more stringent duty nor commended by other principles of wider duty, and (d) is done by an agent who has adopted the relevant principle of wider imperfect duty and has often and continually acted on the principle.⁹⁹

Hill asserts that this formulation shows that it is far less misleading to grant that Kant allows for supererogation than to deny it. Hill produces a trivial example (doing a favour) to support his claim, arguing that a Kantian form of supererogatory action, i.e., one which is non-obligatory but praiseworthy would have the same formal structure as proposed by Chisholm, namely an act good to do but neither good nor bad not to do.

Hill's thesis is an interesting one for several reasons, not only because it seems to be so inconsistent with our understanding of Kant's teaching on the subject, and notwithstanding the fact that trivial paradigms based on Chisholm's deontic model do not conform to the model of supererogation outlined in Chapter One. Hill has isolated the very points

⁹⁸Fulfilling duties of love is actually obligatory, but those who benefit from them view them, and should view them as meritorious." Hill, p. 76.

⁹⁹See Hill, p. 72.

of Kant's system where supererogatory actions could be included. Unfortunately, however, it is clear that Kant did not do so. The condition of supererogatory acts, as we have seen, is that they are not obligatory moral performances; that is, they are not duties. But for Kant, "ethics cannot extend beyond the limits of men's duties to one another."¹⁰⁰ If there is a duty to risk one's life to rescue shipwrecked souls, then it is hard to see how something beyond such an all-inclusive sense of duty is possible, even if there is no conflict with another duty, such as the duty to preserve one's own life. As for conflicts between duties, Kant teaches that they are inconceivable. The concept of duty expresses the practical necessity of certain actions, and two conflicting rules cannot both be necessary at the same time.¹⁰¹

Another objection to Hill's interpretation is that it would have the effect of romanticizing heroic acts, a measure which Kant condemns in the Methodology of the *Critique of Practical Reason*.¹⁰² Marcia Bacon notes that if identified with such heroic deeds, morality itself would come to be thought of as a sort of spectator sport, or as a profession and would become a matter for those with a special gift for it but which would be beyond the reach of most.¹⁰³ This is, of course, antithetical to Kant's

¹⁰⁰ *Metaphysics of Morals*, p. 279.

¹⁰¹ Kant notes that "...if it is our duty to act according to one of these rules, then to act according to the opposite one is not our duty and may even be contrary to duty" *Metaphysics of Morals*, p. 223. Kant admits, however that there can be two grounds of obligation..."both present in one agent and in the rule he lays down for himself. In this case, one or another of these grounds is not sufficient to oblige him...and is therefore not a duty." *ibid.*

¹⁰² The notion of duty is weakened by romantic enthusiasm for actions called "noble, magnanimous or victorious." *Critique of Practical Reason*, p. 141.

¹⁰³ See Bacon, p. 246. Amelie Rorty, among others, is of the view that the complexity of morality in terms of competing communities and personae means that in practice, morality is largely the function of a vanguard group, which typically includes politicians, bureaucrats, judges and, occasionally, parents.

teaching that the moral law applies evenly to all, and is within the ability of all.

Baron also claims that a concern with supererogatory acts might lead people to substitute them for dutiful ones, e.g. by “offering some surplus cheese to the poor, rather than to work to alter the conditions that make poverty and inequality social conditions.”¹⁰⁴ She defends Kant against the incursions of supererogationists such as Hill by extrapolating from the relevant Kantian texts to attack the optional nature of supererogatory acts. “It invites what might be called ‘yuppie’ ethics, for it introduces a division, a fence around what ‘I may choose, as I please,’ separating it from what I ‘have to’ do. I have done my duty (conceived, following Hill’s suggestion, more narrowly than Kant wanted it): now my time, my choices are all mine (except of course, for the constraints of perfect duties).”¹⁰⁵ But of course, all this is inconsistent with Kant’s teaching which in no way restricted the concept of duty. Imperfect duties may be of latitudinal application, but they are open-ended in that we all have an imperfect duty to perfect ourselves morally.

Baron concludes that the Kantian analysis is essentially sound and that Kant was right to include supererogatory acts within his category of wide imperfect duties. She also notes, however, that the specific features of supererogatory actions identified by supererogationist writers which are not adequately accounted for under the Kantian rubric of wide imperfect duties are “better captured by evaluation of character than by recognizing a special category of actions that ‘go beyond’ duty.”¹⁰⁶ She does not,

¹⁰⁴ibid, p. 247.

¹⁰⁵ibid, p. 249.

¹⁰⁶ibid, p. 262.

however, recommend that the notion of “supererogation” be eliminated from the philosophical vocabulary, if only because without it, exceptional acts can only be accounted for in terms of the character of moral agents, but notes that “everything we want to capture with the term ‘supererogatory’ is better captured by talk of imperfect duty and talk of virtue.”¹⁰⁷

One of the most interesting recent contributions to the debate on this issue concerns the relationship between Kant’s ethical theory and his views of aesthetic experience. In the *Critique of Judgement*, Kant explains that the beautiful is a mark of the morally good.¹⁰⁸ Richard McCarty says that as there is a correspondence between the beautiful and the good, there may also be one between the supererogatory and the sublime.¹⁰⁹ According to McCarty, Kant recognized the intuitively evident harmony and mutual support of different realms of value, and that his aesthetic theory which acknowledged the sublime could be extended by analogy to include the ‘supererogatory.’ By analyzing Kant’s concepts of the sublime, he finds that the distinguishing characteristic is the *movement* of the mind from finite sensible representation to transcendent reason. But the ‘analogy’ between moral feelings and the sublime is striking. “In the one case we are humiliated by the law of reason when our selfish inclinations are checked, and in the other case by the sense-defying magnitude and might of nature. Yet immediately, in both cases, we are confronted with the transcendence of the natural world through reason - in a word, our freedom.”¹¹⁰ The

¹⁰⁷ibid.

¹⁰⁸*Critique of Judgement*, paragraph 42, p. 140 ff.

¹⁰⁹Kant’s concept of the sublime “may confer a quasi-moral status on some actions which are good in a relevant sense, though not morally obligatory.” McCarty, p. 43

¹¹⁰ibid, p. 48.

difference appears to be only that whereas respect for the moral law is combined with an interest in action, the feelings of the sublime are merely contemplative.

The relations between moral feelings and the feelings of the sublime then, states McCarty, may not be an analogy at all, but an identity and that the same feeling is stimulated by both the ‘starry heavens above and the moral law within.’ But given the ‘affective nature’ of his proposal, and the appreciation that the uplifting deeds of saints and heroes inspire disinterested admiration and sublime feelings, this account could not be fully justified on moral grounds in Kantian terms. “I suggest that the ‘moral status’ supererogation enjoys is not Kantian moral worth but, from a Kantian viewpoint, it is the ‘quasi-moral’ status of Kantian sublimity, an aesthetic category closely related to morality through its stimulation of moral feeling.”¹¹¹

McCarty’s contribution confirms that of other philosophers whose views have been cited, with the exception of Hill, who believe that a supererogationist account of Kant’s ethics is unjustified. The suggestion that supererogation is more than simply analogous to sublimity represents a valuable insight into the relations between the major realms of value in Kant’s thought, and obliges scholars of moral philosophy to enquire more closely into Kantian aesthetic theory. McCarty notes that it is part of Kantian virtue to know when duty calls, and when it is silent, to gauge the limits of obligation with good judgement. Unless we recognize reasonable limits to moral obligation, Kantian virtue is ‘fantastic.’ But Kant’s concern about the problem of “fantastic virtue” was that it arose in the context of a

¹¹¹ibid, p. 49.

rejection of the morally neutral. It is not so much a case of recognizing ‘reasonable limits on obligation,’ as it is of determining what is obligatory and what is not. Kant’s parallel concern with moral fanaticism was based on the error, to his mind, of mistaking the action itself as the source of moral value, rather than the motive of the action. Kant seems to have been more concerned about countering the former tendency than he was about the latter. This is especially notable in his condemnation of the “shallow, high-flown fantastic way of thinking” which results when well-meaning people confuse merit with obligation.¹¹²

There seems no alternative therefore to acceptance of the thesis that Kant is an anti-supererogationist. Major obstacles lie in place for those who would reconstruct a supererogationist interpretation of Kantian ethics. Onora Nell, for example, notes that Kant “does allow for acts which are meritorious in a certain way without being obligatory.”¹¹³ But Kant calls such actions duties, and as duties, even wide imperfect ones, they are nonetheless required moral performances as determined by the laws of morality. It is therefore, not a “trivial”¹¹⁴ matter that Kant himself termed such actions duties. However, Kant’s account of wider, imperfect duty is as complete as any account we have of them, and, as we explain in Chapter Five, the borderground between imperfect duty and supererogatory acts allows for a zone of transitional uncertainty in which given acts may be variously considered as belonging to one or the other category.

Much of Kant’s work on these issues was conducted in response to the modern natural law tradition in philosophy. As outlined in Chapter

¹¹²See *Critique of Practical Reason*, p. 86.

¹¹³ See Nell, p. 57 ff and p. 95.

¹¹⁴ibid, p. 96.

One, many of our current insights into the questions of supererogation and duty seem to have been anticipated by philosophers working within this tradition. The following chapter outlines the importance of these contributions.

CHAPTER THREE

PERFECT AND IMPERFECT RIGHTS AND DUTIES: ORIGINS

It is curious that the notion of supererogation, or a category of moral experience beyond the requirements of duty seems to be largely a contemporary concern. While philosophers and moralists may have neglected supererogatory actions in fashioning their theories and codes of behaviour, they were usually well aware of such acts as revealed in their accounts of what it means to be human. The modern natural law philosophers, writing on the eve of the enlightenment, largely believed that moral performances of superabundant virtue were imperfect duties. It is to them that we owe the distinction between perfect and imperfect rights, and perfect and imperfect duties. The work of these philosophers in this area of ethics has been overlooked in recent decades, but nonetheless provides critical insights into the nature of moral disagreements and conflicts.

This chapter outlines the origins of the distinction between perfect and imperfect rights, and perfect and imperfect duties in the work of the philosophers of the modern natural law tradition, particularly Grotius and Pufendorf. It assesses the foundations of the tradition of modern natural law in Grotius and examines how Pufendorf transformed the essential insights of Grotius into a system of natural law applicable to individuals and to moral personalities in society and the state. The chapter then addresses the relationships between internality and externality in Pufendorf's theory and methods used to establish and justify his

conclusions. The chapter concludes with a detailed discussion of the concepts of perfect and imperfect rights, and perfect and imperfect duties.

Schumaker explains that the distinctions between perfect and imperfect rights and duties remain somewhat obscure, even though they had been discussed by many philosophers including Kant and Mill. He notes that the doctrine had become such a commonplace and was so widely accepted during the 18th and 19th centuries, that its use prompted little controversy and required no defence. As a victim of its own popularity, a predictable result occurred: the distinction was gradually forgotten, and “its neglect has unwittingly effected some quietly momentous changes in our conceptions of morality and law.”¹

The modern natural law theorists of the seventeenth century shared many of the preoccupations of contemporary thinkers. They struggled to take full account of the dramatic advances in science of their age and tried to interpret their world and the universe in strictly rational terms. While none attempted to do so in a non-theistic way, all of them conceived of a system of ethics and politics which, if not completely independent of divine intervention, was at least self-supporting.² Grotius even held the ‘notorious’ doctrine that the natural law would bind mankind ‘though we should even grant, what without the greatest wickedness cannot be granted, that there is no God, or that he takes no Care of human Affairs.’³ God was universally accepted as the Creator of the Universe, as well as the Vindicator of Justice; the principles of natural law could be determined and

¹Schumaker, 1992, p. vii.

²“eigenständig” see Erik Wolf, p. 316.

³See Tuck, 1987 p. 112.

applied through the use of reason alone, or as some held, through the faculty of “right reason” i.e., a critical but directed analysis of problems pertaining to law as it reflects upon the lives of humans in society.

The changed approach to nature brought about through the discoveries of Columbus and Copernicus strengthened the findings of the Italian renaissance that nature could be known and understood through science and art. Kepler, Galileo, Pascal and Newton were all contemporaries of Pufendorf. The developments in science and technology, as in our time, led to a rethinking of social life and a new consciousness of law.⁴

The group of modern natural law philosophers was essentially cohesive.⁵ The dominant figure was Grotius, the Dutch jurist whose work appeared in the first half of the century.⁶ But the circle also included Pufendorf, Hobbes, Locke, Selden, Tyrrell and Barbeyrac. Locke praised Pufendorf, as did Tyrrell, and corresponded with Barbeyrac, who translated Pufendorf into French and helped to popularize his works. Pufendorf also praised Sir Richard Cumberland. Differences between these philosophers of course surfaced. Hobbes, particularly, was attacked for his pessimism. Pufendorf came to oppose Hobbes’s mechanistic system and the determinism it entailed, but at the same time recognized value in Hobbes’ epistemology and method.⁷ He also worked to draw out unrealized assets

⁴ See Erik Wolf, p. 308.

⁵ See Tuck, 1979, p. 176 ff., Seidler, p. 15. Hont and Tully suggest that the modern natural law school was not as cohesive as Tuck and Seidler contend.

⁶Seidler refers to Grotius as “the seminal figure of the modern natural law tradition.” (Seidler p. 14). Tuck notes that all of these figures “admired Grotius” (Tuck, 1979, p. 176).

⁷See Hont, p. 259 and Seidler, p. 19 ff.

and implications of Grotius's insights by transforming the concept of man's social nature.

The political background to the modern natural law theorists was the devastation, unprecedented and unequalled in European history, of chaos, famine, plague and sheer wastage visited upon central Europe during the Thirty Years War (1618-1648). By the time of the Peace of Westphalia, as much as one-third of the population of large areas of Germany had perished, ending the most catastrophic period it had ever endured, surpassing even the losses of World War II. Savagery and brutality depopulated towns and countryside alike. The peasantry was put to flight and agriculture was ruined. Leipzig was besieged five times, Magdeburg ten. On the site of one town in northern Germany, a contingent of Swedish cavalry found nothing alive but wolves.⁸ By the end of the war, "L'Allemagne n'est plus qu'un désert ravagé où le misère et la famine favorisent les épidémies."⁹

These events made indelible impressions upon the continental natural law philosophers. In many respects the war served as principal motivating forces for their work both as scholars and jurists. At the beginning of the *De Jure Belli ac Pacis*, Grotius says "throughout the Christian world I observed a lack of restraint in relation to war, as even barbarous states should be ashamed of; I observed that men rush to war for slight causes, or no cause at all and that when arms have been taken up there is no longer any respect for law, divine or human; it is as if, in accordance with a general decree, frenzy had openly been let loose for the committing of all

⁸ see Palmer, p. 130-131.

⁹ Laurent, p. 198.

crimes.”¹⁰ Krieger writes that Pufendorf, for his part, always retained the memory of the atrocity stories of his youth and the emotional response of horror, and that this experience constituted “a root both of his impulse to reorder political relations, and of his reverence for powerful authority as the agent of such reordering.”¹¹

But the natural law philosophers were not pacifists. The solution to the problem of brutality they believed lay not, as Erasmus and others were inclined to think, in a renunciation of the use of violence in the service of political ends, but rather the identification of just limitations on the valid employment of physical coercion. The challenge was not only to find a way between the two extremes of pacifism and excessive brutality, but to develop ways of managing conflict which would hold universally, independent of religious or political allegiance. Tully refers to the natural law of socialitas as “the ground for civil peace in modern Europe...it aims to solve the problem of finding a morality (or, better, a society) capable of uniting a confessionally divided Europe by freeing natural law morality from any attachment to confessional differences.”¹²

Grotius

If the imposition and justification of social order was the aim of these philosophers, the natural law was the means by which it was to be accomplished. For Grotius the law begins with human nature. Human beings are social creatures; it is their nature to associate with each other and to unite in society. Now, since every society, even a gang of thieves,

¹⁰ JBP, p. 20.

¹¹ Krieger, p. 13.

¹²Tully, p. xxviii.

needs rules of internal order of some sort, society as a whole must establish laws applicable to all humans. Law is therefore as universal as society because it conforms to the social nature of human beings. “Not expediency, but the very nature of man...is the mother of the law of nature.”¹³ This law governing human beings in society is independent of divine law, but in conformity with it.

Grotius’ theory of natural law begins with his concept of a moral quality. When it is “perfect,” this moral quality is seen as a right to possess something. He terms this a facultas, as opposed to an imperfect right to possess something, i.e. an aptitudo. Following Aristotle, Grotius says that a perfect right corresponds to an ‘act’ and an imperfect right to a ‘potency.’ Perfect rights, i.e. faculties or “legal rights”¹⁴ are divided into powers, property rights and contractual rights. A legal right, he says, is known by the jurists as the right to what is one’s own (suum). Now, powers are divided into powers over oneself and power over others; property rights include absolute or usufruct ownership and the right of pledge, i.e. promises. Contractual rights however give rise to contractual obligations “on the other side.”¹⁵ Grotius makes therefore a clear link between a particular category of perfect rights, i.e. contractual rights, with corresponding contractual obligations.

An aptitudo, or imperfect right, he notes was called ἀξία by Aristotle, that is ‘worthiness’. For an explanation of the relations between “faculties and aptitudes,” Grotius introduces the concepts of expletive and attributive justice. Legal rights, i.e. perfect rights of a faculty are the

¹³ DIBP, p, 15

¹⁴ *ibid*, p. 35

¹⁵ *ibid*

concerns of expletive justice, which is entitled to the name of justice strictly so-called. He notes that this corresponds to Aristotle's use of the term "contractual justice". Aptitudo, on the other hand, corresponds to the concerns of attributive justice. "It is associated with those virtues which have as their purpose to do good to others, as generosity, compassion and foresight in matters of government."¹⁶

Whereas Aristotle maintained that expletive justice was "arithmetical" i.e. regulated in a strict correspondence between actions and the law, and that attributive justice was 'geometric' by comparison, Grotius disagrees, noting only that the correspondence sometimes holds, but that it sometimes does not, depending on the "matter" with which each is concerned.¹⁷ Nor does Grotius agree with the statement that expletive justice is concerned with private property, whereas the province of attributive justice is limited to public property. While not giving his own definitive views of these various distinctions, Grotius does offer an instructive overview of the law. Law, he says is variously seen as a rule of action, as a body of rights or as a rule of "moral actions imposing obligation to what is right."¹⁸ This latter view of law has the same force as a statute, he says. "We have need of an obligation; for counsels and instructions of every sort, which enjoin what is honourable indeed but do not pose an obligation, do not come under the term statute or law. Permission again, is not, strictly speaking, an operation of law, but a negation of operation, except in so far as it obligates another not to put any hindrance in the way of him to whom permission is given. We said

¹⁶ *ibid*

¹⁷ *ibid*, p. 37

¹⁸ *ibid*, p. 38

moreover 'imposing obligation to do what is right' not merely to do what is lawful, because law in our use of the term here stands related to the matter not only of justice, as we have set it forth, but also of other virtues."¹⁹

Grotius concludes that the best division of law is that given by Aristotle into natural law and volitional or statutory law, with rather a strict use of the word statute. In the Prolegomena to the DJBP, Grotius implies that the whole field of law comprises perfect rights and duties only, i.e. i) abstaining from that which is another's, ii) restoring to another anything of his which we may have, iii) the obligation to fulfil promises, iv) making good losses incurred through our fault, and v) inflicting penalties on men according to their deserts. The essence of law, he states, lies "in leaving to another that which belongs to him, or in fulfilling our obligation to him."²⁰

From this discussion, the distinctions between perfect rights, imperfect rights, perfect duties and imperfect duties have begun to emerge. But it is clear that the area beyond strict statutory rights and duties relating to contractual obligations is, for Grotius, a matter of virtue and not of justice. The basic distinction between "perfect duties" as the morally enforceable requirements of the statutes of either positive law or a state of nature, and those corresponding to the other virtues, is clearly evident. But Grotius strongly cautions us that the law of nature is divided only into obligatory and prohibited actions. "The law of nature is a dictate of right reason, which points out that an act according as it is or is not in

¹⁹ *ibid*

²⁰ *ibid*, p. 10.

conformity with rational nature, has in it a quality of moral baseness or moral necessity; and that in consequence, such an act is either forbidden or enjoined by the author of nature, God.”²¹

Imperfect duties are undeveloped in this discussion. The entire schema is ripe for re-definition and re-organization. For Grotius, the concept of perfect duties was entirely responsive to the concept of perfect rights which in turn enjoyed the status of “lexical” priority, to use a term from modern contract theory. Pufendorf completed the various linkages, as will be shown, largely by casting aside the Aristotelian framework within which Grotius chose to frame his distinctions (including references to act, potency, arithmetic, geometry, and expletive and attributive justice).

Pufendorf’s views on many subjects were heavily criticized during his lifetime, and indeed beyond it. In particular, his political philosophy was opposed by Leibniz. We hope to show that Leibniz’ criticisms were based on an incomplete understanding of Pufendorf’s views. But Pufendorf’s reputation also suffered at the hands of Kant, who concluded, incorrectly, that the ‘middle way’ of the natural law philosophers on the issue of force of arms justified aggressive war.²² Before entering into such controversies or Pufendorf’s approach to moral complexity, and his account of perfect and imperfect rights and perfect and imperfect duties, it

²¹ *ibid*, I,10,1.

²²See Kant, 1949, p. 443. When Kant mounted this attack, he also accused Grotius, along with Pufendorf, as “miserable consolers” (*ibid*, *op cit*). But this is unfair to Pufendorf, at least, because, although he defended the concept of the ‘just war,’ he hedged it around with so many conditions, including control and temperance in the use of force, as to vitiate any claim that he had provided a justification for aggressive warfare. On the contrary, he held that war could justly be waged only if an enemy has threatened injury, and denied a perfect right with evil intent.

is appropriate to set out an account of Pufendorf's contributions to the structure of moral action.

Pufendorf

Pufendorf's contemporary reputation is much less flattering than the effects of his influence on philosophy and jurisprudence might lead one to believe. The only book about Pufendorf in English (Krieger) is decidedly unsympathetic.²³ Schneewind says Pufendorf was neither consistent nor original. Leibniz, a contemporary, referred to Pufendorf in private correspondence as "vir parvum iurisconsultus, sed minime philosophus."²⁴ In correspondence with Pufendorf however, over the period 1690-1693, he was most complimentary, at one point referring to him as "vir egregius in hic studiis."²⁵ But Pufendorf's influence is nonetheless significant and long-lasting.²⁶ He was a precursor of many later thinkers, including Kant.²⁷ Rousseau acknowledged him as a revered teacher.²⁸ For nearly 100 years, his work was accepted as the standard work on practical law, particularly in Germany²⁹. His work was widely admired for its pedagogical utility; the DOHEC served as a college (i.e. lycée or gymnasium) text in France, Switzerland and Sweden as well as Germany for over 100 years.³⁰ Denzer,

²³Seidler terms this work very helpful but "highly interpretative."

²⁴ Letter to Kestner, August, 1709: see Erik Wolf, p. 312.

²⁵ See Welzel, p. 4.

²⁶Schneewind (1990, p. 48) notes that Pufendorf was the most widely disseminated of the natural law writers of the 17th century, and the most widely and persistently taught. Denzer notes that the DOHEC was translated into all major European languages and went through over 100 editions.

²⁷Schneewind notes that the distinction between perfect and imperfect duties "provides the context for understanding the two most original and profound of the modern discussions of the subject - the theories of Hume and Kant." (ibid).

²⁸ See Krieger, p. 259; on Rousseau's 'lecture de chevet,' see Laurent, p. 38.

²⁹ See Erik Wolf, p. 333 ff.

³⁰ See Denzer, p. 10.

Welzel and Krieger all explain that Pufendorf's thought exerted an influence in the thirteen colonies over the course of the debates on American independence, particularly regarding the revolutionary call for equality and human rights for all.

Pufendorf's career can be divided into several stages according to the patron for whom he worked at given times.³¹ But his career as a philosopher was launched with his earliest work, which, like Hume, he came later to disown in parts, but which reflects both more originality and energy than much of his later work. Imprisoned by the Danish government as a member of the household of Baron Coyet at a time when Sweden had just resumed war against Denmark, Pufendorf found himself, as a completely innocent pawn, in jail for 8 months in 1668, during which time he completed this most significant work - the *Elementorum Iurisprudentiae Universalis*.

The EIU provides a framework for Pufendorf's later work, principally the compendium of natural law published in 1672 as *De Jure Naturae et Gentium*, followed by a much shorter work designed as a summary presentation of his views the following year. This was published as the *De Officio Hominis et Civis* which has retained its popular appeal for over 300 years. Basic to this continuing attraction is Pufendorf's positive-minded approach to the major issues of morals, law and politics, his rational optimism³² and his ability to combine theory and practice, the structure and content of these fields without sacrificing principle to

³¹This included, successively, the Swedish Minister to Denmark, Baron Coyet (1658-1659), Karl Ludwig, Prince Elector of the Palatinate (1660-1670), Charles XI of Sweden (1670-1686), and the Great Elector, Friedrich Wilhelm of Prussia (from 1686 until Pufendorf's death in 1694). The year 1994 marks the tricentenary of his death.

³² See Erik Wolf, p. 318.

practice or the reverse. His approach is therefore prudent and courageous: he unveiled concepts relating to the equality of all men at a time when absolutism held sway in most parts of Europe. He balanced originality with devotion to the princes he served. He was preoccupied with the question of certainty, claiming that it was as important and as necessary in moral philosophy as in natural science, but he preferred the deductive method to establish his system. He was in fact a great systematizer: Weiacker terms him “der Zentrale Systematiker des Vernunftrechts,”³³ a claim recast by Seidler as “the first and most important systematizer of natural rights in Europe.”³⁴ But at the same time Pufendorf recognized the importance of latitudinarian approaches to the interpretation of the moral law, a method later to be employed by Kant in the *Metaphysics of Morals*.

The main feature of Pufendorf’s moral teaching he shares with Grotius; human beings are social beings, and they have been made by nature to have social relations (socialitas). They are in a state of profound and prolonged weakness (imbecillitas) and need (indigentia) during which time they are totally dependent upon other humans. Men naturally come to cherish most their own life, their person and possessions. Self-esteem or dignity is deeply characteristic of all men, who should treat others as equals on this account.

Pufendorf’s teaching on man’s natural state is complex and has been the subject of some interesting contemporary scholarship. There is debate as to his real meaning about important issues, including whether man’s natural state is characterized by war, or not, or whether Pufendorf actually

³³ Wieacker, p. 97.

³⁴ Seidler, p. 51.

believed that a state of nature occurred as an anthropological phenomenon, as opposed to an intellectual construct. As for the first issue, Pufendorf's work can be interpreted in both senses. In the EIU, Pufendorf says that "peace proceeds from the natural state of man"³⁵ and that "we would rage against one another mutually in the manner of wild monsters, were it not that nature had altogether bidden us to unite to form a peaceful society."³⁶ But in the DOHEC, where he contrasts the state of nature with that of civil society, he contends that "there, {i.e. in the state of nature} there is the reign of the passions, there there is war, fear, poverty, nastiness, solitude, barbarity, ignorance, savagery; here {i.e. in civil society} there is peace, security, wealth, splendour, society, taste, knowledge, benevolence."³⁷ The most satisfactory explanation of the apparent discrepancy in these accounts is provided by Pufendorf himself in one of his later works, *De Statu Hominis Naturali*³⁸ first published in 1674, where he comes down squarely in the middle on the issue: "The natural state cannot properly be considered a state of war. But because of men's wickedness, their desires and the passions which struggle vehemently against right reason, it is also characterized by a rather unstable and undependable peace."³⁹

As to whether the state of nature is to be considered an anthropological fact or a theoretical construct, the issue is somewhat less uncertain. Hont says it is not entirely clear "whether Pufendorf himself believed that a state of nature actually existed,"⁴⁰ whereas Seidler claims

³⁵EIU, p. 11

³⁶ibid, p. 234.

³⁷DOHEC, II,1,9.

³⁸According to Seidler, the DSHN is Pufendorf's "last word on the subject, as it were." See Seidler, p. 27-28.

³⁹DSHN, p. 130.

⁴⁰Hont, p. 256.

that if one thing is certain, it is that “Pufendorf never considered the natural state in its full or pure sense as an historical actuality.”⁴¹ The reasons for these divergent views relate to differing treatments of the theme in various works. In the DOHEC, for example, Pufendorf notes that we may consider the state of nature “by an imaginative effort” would have been worse than for beasts,⁴² but also that its character may be considered “either as it is represented in fiction or as it is in reality.”⁴³ Seidler provides a most useful overview of the the range of usages which Pufendorf employed in various of his works.⁴⁴ Relying on the DSHN as the latest account shows that Pufendorf presents the issue from two separate standpoints - both as an anthropological construct and as a contrast to the civil state.⁴⁵ But the questions of how such a condition arose or whether it was characterized more by war or a war-like peace are secondary to Pufendorf’s aim to contrast the state of nature analogous to the period of the Thirty Years’ War to the established peace which followed upon the Treaty of Westphalia. Tully explains this point by showing that “Pufendorf was able to draw on this dual experience to contrast the two concepts which are used in natural law philosophy to define each other by a series of contrasts: the state of nature as a world of war and insecurity and the state of political society as a world of general peace and security.”⁴⁶

The question therefore of the condition and hypothetical existence of the natural state and how such issues arose is of much less interest than the

⁴¹Seidler, p. 35.

⁴²DOHEC, II,1,4.

⁴³ibid, II,1,6.

⁴⁴See especially Seidler, p. 32 where the complexities of various formulations are compared.

⁴⁵See DSHN, p. 112 ff.

⁴⁶Tully, p. xx.

observation that it regulates all actions of human life as the natural background to all human dealings. Human life involves the obligation of observing the law of nature both towards oneself and others, and of living with them on terms of social interaction. Otherwise, business intercourse and peaceful society could not exist, and there would be nothing about which to philosophize whatsoever.

Because the natural law would recommend that life be maintained, the natural state is therefore not war but peace. Every man is under an obligation to cultivate peace with every other man. Universal peace requires only that no one injure another unjustly. If controversies arise, settlement can be arranged by mutual agreement or by arbitrators. Such a peace stands solely by obligation of the law of nature and unless the parties to the agreement come together into one body or society on that account, it is useless to fortify it with pacts or treaties. The law of nature therefore binds men to foster social relations amongst each other. Considered collectively, persons constitute a society or an association when several of them are so united that both their action and their will are regarded as the action and will of a single individual, and not of several. When individuals subject their own wills to the will of a single individual, then that person is recognized as the head of that society. Alternatively, the majority of members in the society can decide in matters concerning the society. In such a case, individuals as such bind themselves mutually to the declaration that they wish to form a single moral society. Two separate pacts are involved in the establishment of a society; i) the desire on the part of individuals with other individuals that they desire to have their affairs intertwined, and administered by common counsel, and ii) that pact which is made with those to whom the care of the common safety is entrusted.

There is no man whose safety is not bound up in the good will of others toward him. However, justice without God is an offense against nature, because if God is removed from the function of administering justice, as its supreme vindicator, all the efficacy of these pacts, to the observance of which one of the contracting parties is not able to compel the other by force, will immediately expire and every one will measure justice by his own particular advantage. Now, evils are inherent in every society. The law of nature, however, bids us to temper those evils.

Rights are recognized as largely co-extensive with duties. Of course, children have rights before they have duties but for all adult, responsible agents, one man's right is another man's duty. It is a creditor's right to seek reimbursement and a debtor's duty to repay it. Rights are either perfect, i.e. corresponding to positive law and subject to court action, or they are imperfect and not so subject. Imperfect rights and duties have no grounds for redress in a court of law. One cannot compel others by law or action of the courts to do one favours of any kind; nor can one go to court to prove ingratitude on the part of others and obtain a judgement. Such actions have moral value as actions of imperfect right or duty and for the most part largely constitute two sides of one coin.

Internality and Externality

In his "Opinion on the Principles of Pufendorf," Leibniz finds fault with several contentions advanced in the DOHEC; two areas deserving special consideration are the scope of the natural law and the relations between intention and execution. No mention is made by Leibniz of the earlier works, of which the DOHEC is a summary account. Leibniz attacks this work for being incompatible with Christian life and principle, noting

that by restricting the field of application of the natural law to human life, and thus excluding the after-life, Pufendorf has prepared a philosophy which is "valid for atheists."⁴⁷ Leibniz then goes on to attack Pufendorf's doctrine as expounded in the DOHEC that natural law deals only with externalities, and repeats his charge of impiety by showing how Pufendorf has overlooked the life of the soul, intentionality and internal probity.

The first criticism betrays a lack of understanding about the law of nature and its relationship with divine law. Pufendorf's concern is precisely to overcome theological barriers to agreement on basic issues of morality. It was a theme in Grotius and to some degree reflected in Leibniz's own work to further the Respublica Christiana and to heal the split between Catholics and Protestants. Leibniz is correct, therefore, in stating that the natural law of Pufendorf's conception is valid for atheists, as indeed it was fashioned to be also acceptable to non-atheists of all descriptions.⁴⁸ It was neither reason nor contract, nor utility as such which forced men to unite in peaceful society, but rather the nature of man, quite independent of divine intervention. All men are equal, Pufendorf contends, and religious or theological affiliation makes no difference, although he recognizes that religious differences pose obstacles for natural law. As if anticipating Leibniz's objections on this point, Pufendorf notes in the introduction to the ING that "I have felt it fitting...also to point out that I have made the basis of all natural law the social life of man, because I

⁴⁷ Leibniz, p. 61.

⁴⁸ "Soll überhaupt die Geltung des Naturrechts universel sein, so muß es aus einem Princip abgeleitet werden, das alle Menschen qua Menschen, aber nicht qua Christen anerkennen..." "Es gibt kein spezifisch Christliches Naturrecht als rationale Disziplin, wie es kein spezifisch Christliche Philosophie, Logik, Mathematik, Physik geben kann." Welzel, p.33.

have found no other principle which all men could be brought to admit, without violation of their natural condition, and with respect to whatever belief they might hold on matters of religion.”⁴⁹

Leibniz’s contention that Pufendorf overlooks intentionality is based on Pufendorf’s explanation in the preface of the DOHFC of the province of natural law. This he carefully distinguishes at the outset of his discussion between the disciplines of natural law, civil law of individual states, and moral theology. Each discipline is marked by its own methods of proof.⁵⁰ From this it follows, Pufendorf claims, that “as human jurisdiction is concerned only with a man’s external actions and does not penetrate to what is hidden in the heart and which gives no external effect or sign, and consequently takes no account of it, natural law too is largely concerned with forming men’s external actions.”⁵¹ This passage recognizes external actions as the proper field of the application of the laws of sociality, but Pufendorf can hardly be said to overlook questions of intentionality.

His most complete statement on intentionality or internal probity is found in an extensive and original discussion in the EIU. This work opens with an analysis of voluntary moral action. Such actions have two components - i) the “material” element, i.e. the action or exercise regarded objectively, and ii) what he terms the “formal” element - “which is the dependence of the exercise upon the decision of the will and the reason, operating with a kind of freedom of choice, by which the action, as decided

⁴⁹ ING, p. ix.

⁵⁰ “In natural law, a thing is affirmed as to be done because it is inferred by right reason to be essential to sociality (socialitas) among men. The ultimate formulation of the precepts of civil law is that the legislator has imposed them. The first reference point of the moral theologian is that God has so commanded in the Holy Scriptures.” DOHFC, p. 7.

⁵¹ *ibid.*

by the will, is conceived.”⁵² His discussion under Definition XVIII “Definition of Moral Action” is more specific and directly relevant to the classification of moral actions.

Pufendorf’s system of classification takes the shape of a sphere with God in the centre of the axis between the perpendicular one connecting the two poles of the sphere with its diameter. Circling the sphere are two meridians - the “meridian of execution” and the “meridian of intention.” A perfectly good act in accordance with God’s law therefore, will coincide with the uppermost pole, i.e., with both the angle of execution and intention as measured from the mid-point of the sphere, i.e. the position of God at their highest point. Now actions which are less than perfectly in accord with divine law can be assessed objectively in so far as they decline from the vertical on either of the two meridians. An action lying on the equator, as it were, would represent omission. Pufendorf in fact posits twelve positions of decline from the vertical on the meridian of intention from the omission of an act to its most perfect fulfillment. Similarly, he posits twelve degrees of decline from the equator to the lower pole to coincide with degrees of declination towards sin situated figuratively at the lower pole. In order to measure the goodness of an action therefore, one needs to measure the radius of both meridians, i.e. of execution and intention. To illustrate, Pufendorf provides twenty-four gradations of intention ranging from sin to perfect goodness. The twelve gradations of good actions calculated from the mid-point on the meridian of intention towards the polar summit include for example, step #1 “the idea of a good action submitted to the mind,” step #3 “deliberation as to

⁵² EIU, p. 1.

whether it should be done here and now,” step #8 “intention partial, languid, and easily responding with a legitimate end, i.e. to render obedience to the law.” The last step #12 indicates that the “intention is most full and firm, which strikes precisely on the polar summit.”

Now Pufendorf did not follow up with such mathematical methods to the analysis of moral problems in subsequent works and indeed in the ING seems to reject the type of analysis which is here presented as a type of youthful enthusiasm. It ought to be clear, however, that Leibniz’ reading of Pufendorf was only partial. To be sure, for both Pufendorf and Leibniz, intentions are known only to oneself and God is the only judge of them whether for ourselves or others. The point is not that intentions are unimportant in moral theory, but merely that they cannot be measured or assessed with any accuracy at all by others and that for this reason, only outward morality, external voluntary actions, i.e. the material element, as Pufendorf would say, is open to discussion amongst moral agents.⁵³

This remains a common theme in contemporary liberal thinking.⁵⁴

Patterns of Moral Complexity

Pufendorf uses a wide spectrum of methods to present his views on natural law, particularly in the ING which fairly brims over in kaleidoscopic fashion with precedents and supporting examples of all

⁵³Tully also defends Pufendorf against Leibniz’s accusation by noting that “Pufendorf’s point is that only if these traditional concerns are eliminated from the publicly enforced morality, left to various church and moral authorities, and natural law reoriented to the realm of sociality, will civil peace and social life be secure.” See Tully, p. xxiv.

⁵⁴See Kymlicka, p. 12. ...”My life goes better if I’m leading it from the inside, according to my beliefs about value.” Also p. 19.

kinds.⁵⁵ Pufendorf prefers deduction, but strengthens his conclusions with such a superabundance of evidence from literature, history, sociology, anthropology, law and politics, that the effect is often inductive in its impact. He willingly recycles Aristotle's virtue-based ethics, propounds the primacy of utility and yet preserves a fundamentally deontological focus.

Some writers, particularly Krieger and Schneewind, have isolated a number of problems with Pufendorf's approach to these issues. Krieger finds the Pufendorffian opus to be "honeycombed with juxtaposed and unresolved combinations: the methods of induction and deduction; the principles of sociability and utility; the canons of rationality and authority; the endorsements of absolutism and constitutionalism; the concatenation of secularized natural law, Lutheranism and history."⁵⁶ Schneewind holds that these and other contradictions within Pufendorf's system entrain internal inconsistencies which, he speculates, causes it to "fall apart."⁵⁷ Certainly the capacious reservoir of theory and practice encompassed by Pufendorf's natural law vision can be seen at least as potentially self-contradictory. It is his strongly held belief that moral actions are composed of internal and external components, but that the external component alone lends itself to assessment and evaluation by others, apart from God. While he claims utility as the source of the moral law, he also asserts the primacy of duty and the importance of habits leading to virtue.

⁵⁵Pufendorf addresses himself to the full range of human moral experience, including saintliness and heroism, as well as drunkenness, lying, suicide and all forms of sexual misconduct, including an interesting explanation of why pimps commit perjury. He refers to all manner of customs, laws and conventions drawn from history and the sociology of his day (e.g. practices of the Japanese, the Javanese, and the teachings of the Koran). He even examines an ancient tale of avenging lighthouses.

⁵⁶ Krieger, p. 2.

⁵⁷ Schneewind, p. 149.

Before briefly reviewing the importance of virtue, duty or utility in establishing the natural law theory, it is worth noting that eclecticism⁵⁸ or even syncretism constitutes a recognized method of inquiry into ethics. Charles Larmore has given these methods added respectability by showing how deontological or consequentialist theories are essentially monist, that theorizing of this type “never benefits from demarcating in advance the boundaries of the intelligible,” and that “we do best to see morality, at its deepest level, as a matter of ultimate commitments,” and that “as a result, we should acknowledge that moral conflict can be ineliminable.”⁵⁹ Certainly Pufendorf’s inquiries were conducted in such a manner; he seems to favour various approaches at different points in the development in his thought, in accordance with the matters at hand.

In important respects, Pufendorf is a precursor of Kant’s moral philosophy. A morally good action, according to Pufendorf is one which agrees with the law; an evil action is one which does not agree with it. The formal reason for the goodness or evil of actions lies in their bearing, or determinate relation to a directing rule, to a law which “necessitates.”⁶⁰ Furthermore, in order for an action to be good, it must harmonize with the law according to all quasi-material requisites, and also, as far as its formal character is concerned, to have been performed not from ignorance or some other cause, but in order to render an owed obedience to the law.⁶¹ The commands of the natural law, he adds, can be absolute or hypothetical. “The former are those which obligate all men, in whatever state they may

⁵⁸ See Krieger, p. 73.

⁵⁹ Larmore, p. xi.

⁶⁰ See ING, p. 114.

⁶¹ *ibid*, p. 229.

be, and without regard for any institution formed or introduced by men.”⁶² Pufendorf also commends the Golden Rule for its realism in stressing the self-directed nature of all morality.

It is clear that the importance of obedience to the law, and agreement with it, the “formal” conditions of its “necessary,” “absolute” application and its similarity to the Golden Rule approximate very closely indeed to the Kantian project with its key concepts of reverence for the law, the conceptualization of moral criteria in terms of actions taken both in accordance with the law but also for its sake, the formal conditions of the law and its applications both hypothetical and categorical. Pufendorf’s fully developed concept of duty was also very similar to Kant’s, as will be demonstrated in our discussion of the relationship between perfect and imperfect rights and duties.

But Pufendorf was also most conscious of the tension between the desirable and the attainable in moral and political conduct. His vision is preeminently realistic. Krieger recognizes him for blending political idealism and political reality.⁶³ But it is very clear that Pufendorf was more concerned with *Sittlichkeit* (i.e. practical morality) rather than with *Ethik* (i.e. abstract ethics); with concrete issues of fairness in place of abstract rectitude.⁶⁴ Utility therefore figured largely in his considerations. It is, he says, reformulating Grotius, “the mother of law.”⁶⁵ Nonetheless, utility cannot serve alone as the standard of the universal law of nature. He

⁶² *ibid.*

⁶³ Krieger, p.1.

⁶⁴ See Erik Wolf, p. 312; also Denzer, p. 7: “Das Metaphysische war ihm seit lebens fremd, er liebte das handfeste Zupacken an den Dingen dieser Welt, er befaßte sich vor allem mit den Problemen der menschlichen Zusammenlebens.”

⁶⁵ ING, p. 161.

captures the inherently self-contradictory nature of much consequentialist thought by situating the issue in terms of personal security, or safety. "...if everything may be measured by that false standard of utility, the safety of every man, however powerful he be, would be uncertain so long as anyone thinks it to be to his advantage for him to die, and whoever pursues such a course, by his example shows others the way to undertake the same course of action against him."⁶⁶

Of course, in directing our action, "much regard must be taken of utility."⁶⁷ Pufendorf provides literally hundreds of examples exhibiting the importance of consequentialism in the conduct of men's affairs, but retains a strong inclination to deny paramountcy to any particular theoretical method of inquiry. He writes convincingly about virtues in general, in specific applications, of the importance of habit and character.⁶⁸ In some passages, he combines elements of all three traditions, as in his treatment of the moral choices facing a soldier forced to take human life in order to save his own.⁶⁹

The reasons for this apparent methodological bewilderment rest in part on his concept of moral action and with his judgement about how best to proceed in doubtful cases. For Pufendorf, moral actions should be considered in terms of four principal factors: the object of the action, its status and condition, the condition of the moral agent and the consequences of the action.⁷⁰ The object of an action may be anything at all, he says -

⁶⁶ *ibid*, p. 97.

⁶⁷ *ibid*, p. 45.

⁶⁸ *ibid*, pp 58-59. See also EIU, p. 70. "He, and he only who acts well by habit, receives the name of a good man, and he who acts ill by habit, the name of a bad man."

⁶⁹ *ibid*, p. 282.

⁷⁰ See EIU, DEF XVIII

“God, the universal society of man, a state, individuals, life, modesty or reputation.” By the status or condition of the object, he means the ease or difficulty of the moral action. The status of the moral agent is relevant because emotions may affect judgement, and so restrict or expand behavioural options. Furthermore, splendour of status lends an element of baseness to misdeeds, whereas the contrary also holds, i.e. a person of low status will attract greater admiration for a brilliant performance. Only lastly are the effects or consequences of the action to be considered.

Pufendorf’s views on the plurality of ethical methodologies is perhaps most clearly explained in his discussion of what determines a “probable conscience,” i.e., a moral agent minded to take action along specific lines, but still uncertain as to whether the course of action identified is, in fact, the best. In order to assist in settling such troubles, Pufendorf offers a seven step guide to the perplexed which draws on elements from Aristotle, as well as from deontological and consequentialist frames of reference.⁷¹ His approach to this issue is eminently prudent: when faced with deciding on the basis of principle or safety, one should always choose safety. If inconvenience or harm occurs as a result of one option and not a second, then one should choose the latter. Ignorant men should follow the authority of those more prudent than themselves. Persons under the authority of others should do their duty as they see it. This resolution of forces is quite consistent with Larmore’s synthesis⁷² which clarifies the precedence of claims exerted particularly by

⁷¹ ING, p. 43.

⁷² Larmore, p. 148.

deontological methods through their force and by consequential methods because of the greater urgency they can convey.

Pufendorf was no philosophical ideologue. He couched his insights within the supporting upholstery of argument and documentation from many sources, traditions and methods of inquiry. Far from inducing inappropriate inconsistencies, confusion or self-contradiction, the overall approach projects itself as profoundly human, rational, optimistic and imbued with φρονεσις.⁷³

Perfect and Imperfect Rights and Duties

The historical accretions of meaning which attach to philosophical terms are not infrequently misleading as well as confusing, and never seemingly more so than with respect to the so-called duties of 'imperfect' obligation. The terms 'perfect and imperfect' as they are found in use today refer to terms whose origins are to be discovered in Roman jurisprudence. Pufendorf, citing Ulpian,⁷⁴ noted that antiquity recognized that laws were divided into three types; i) perfect laws, i.e. those which not only provided penalties for prohibited acts, but also invalidated acts performed unlawfully: ii) nearly perfect laws (minus quam perfectae) which were similar to perfect ones, except that they could not invalidate acts already committed; and iii) imperfect laws which could forbid certain actions, but which neither provided penalties nor invalidated actions. By the third century, A.D., the tradition had developed of matching laws with punishments, with the result that contemporary positive law is virtually all

⁷³ "Dabei war er... ein Man der Lebensklugheit, der gutherzigen Verschlagenheit und Schläue" Denzer, p. 7.

⁷⁴see ING, I,6,14.

perfect or nearly perfect. The philosophical distinction lies very much where it was left by the major pre-enlightenment figures: perfect duties are legal obligations, concerning outward acts only, whereas imperfect duties are acts which arise out of moral feelings or ethical considerations.

Kant's account is distinctive from this formulation because he recognized perfect duties which were both internal and external. They will be dealt with separately in this thesis. Nevertheless, Kant's approach is largely coincident with the classical treatment of the theme, as he held that the principles of right or justice are perfect and that the principles of virtue or ethics are largely imperfect.

Tradition constrains us to retain the customary way of addressing these concepts, despite their lack of complete suitability for the purpose they are intended to serve. A simple way to approach the distinction is to suggest, following Meinong, that perfect duties concern what might be termed "correct" behaviour, i.e., actions which can be judged as correct or incorrect by the designated institutions of society, such as parliaments, or legislatures, tribunals or courts of law, and corrected, if deemed to be incorrect. If child support is not paid properly, means can be taken to ensure that it is paid. Imperfect duties, by contrast, concern responsibility rather than mere correctness: more than paying child support is normally required of a good father separated from his children.⁷⁵ These additional duties are optional to a certain extent, but within given limits which are understood by society collectively. Imperfect duties remain obligatory;

⁷⁵Let us leave aside the question as to whether payment of child support is supererogatory in the absence of visitation rights.

they do not lend themselves to clear definition in advance of their performance.

Pufendorf's classification of moral actions contains a number of key insights. His pre-figuring of a concept of supererogatory action, as noted at the end of Chapter One, should be seen in the context of a spectrum of actions included under a variety of categories including acts of humanity, charity or love; justice and equity; the 'necessary,' the 'forbidden', and the 'licit; ' as well as perfect and imperfect duties. For Pufendorf, the natural law requires not only that human beings refrain from unjustly injuring each other. "A man has not paid his debt to the sociable attitude if he has not thrust me from him by some deed of malevolence or ingratitude, but some benefit should be done me, so that I may be glad that there are also others of my nature on this earth."⁷⁶ Quite apart from, and prior to any question of exchanges, pacts or agreements between humans, Pufendorf claims that works of humanity and love flow from the law of nature. "[Works of humanity and love] are not owed by reason of agreements, express or implicit, but are laid upon all men by nature herself."⁷⁷

But we do not inhabit a sacred society composed uniquely of holy wills, nor the best possible of all possible worlds. Not all men are so constituted that they would be willing to do everything they possibly can to assist others out of mere humanity and love, without hope of some reciprocal benefit. Pufendorf's account of acts of humanity, charity or love therefore, situates them as "lexically prior" to both rights and duties,

⁷⁶ ING p. 346.

⁷⁷ *ibid* p. 380.

but clearly indicates that they are insufficient guides to behaviour of moral agents.

Rights and duties are the province of justice, or equity. One enters the realm of justice from the realm of humanity, charity or love by asserting a right. Duties follow from the exercise of rights in reciprocal fashion: one person's right, generally, grounds another person's duty. It is important to recall that Pufendorf considered both these realms to constitute the entire range of moral action. The law of humanity or charity, together with agreements of humans amongst each other mutually support each other, "so that what is not or cannot be guaranteed by charity, is secured by agreements, while in cases where agreements are not possible, charity offers its services."⁷⁸

The distinction between justice and equity corresponds roughly to the qualities of "perfection" or "imperfection" in rights and duties. He claims that a "sterner necessity" is laid upon us to do the former, whereas we are more gently bound to do the latter."⁷⁹ Yet the latter has a wider scope, as indicated by the opening quotation from Seneca, if only because, according to Pufendorf, it includes both duties and virtues. Pufendorf gives two analyses of the classical division of moral action into the obligatory, the prohibited and the permissible. In the EIU, he reformulates the distinction in terms of the 'necessary', to which one is bound by law or command, the 'forbidden' and the 'licit' which is divided into two parts - the perfectly licit, i.e. that which is not forbidden by either divine law or civil law, and the imperfectly licit, i.e. that which is permitted by civil law. This view is

⁷⁸ *ibid.*

⁷⁹ *ibid* p. 33.

revised, however, in the ING where he takes the view that the universality of the natural law is such that individual actions are either harmonious with it or not. At the same time, however, he recognizes the importance of latitude in moral quantities, which cannot be measured with any of the accuracy or precision of which physical quantities are capable.⁸⁰

Pufendorf's conclusion is, again, a compromise, an unwillingness to embrace extremist solutions by holding either that moral issues are inherently uncertain, or that they are knowable with absolute certainty through the use of putatively 'correct' methods. He quotes Grotius on this matter as follows: "certainty is not to be found in moral questions in the same degree as mathematical science...In moral questions, even trifling circumstances alter the substance, and the forms which are the subject of inquiry are wont to have something intermediate, which is of such scope that it approaches now more closely to this, now to that extreme. Thus, it comes about that between what should be done and what it is wrong to do there is a mean, that which is permissible; and this is now closer to the former, now to the latter. Hence, there often comes a moment of doubt, just as when day passes into night or when cold water slowly becomes warm."⁸¹

We have seen that rights are prior to duties in that, while under the law of humanity or love, the issues of rights and duties do not arise. It is when one steps outside the circle of mutually supportive beneficence that one asserts a right. This is inevitable because men seek above all the satisfaction of their own interests. But rights are also prior to duties both

⁸⁰ *ibid* p. 35

⁸¹ IBP, p. 10.

in quantitative and temporal terms. There will always be more rights than duties, if only because, for the reason noted above, infants acquire rights as moral agents before they acquire any duties. Pufendorf also notes that rights outnumber duties because a prisoner is not duty-bound to submit to punishment which his sovereign has the right both to prescribe and impose.

On the whole, however, and for the most part, Pufendorf taught that rights and duties reciprocally imply each other: “obligations follow each other in such a way that when an obligation arises for one person, there springs up in another its corresponding right, since it is inconceivable that I should be obligated for something unless there be someone who may require it of me, or at least properly receive it from me.”⁸² An obligation, he states, to which there is no corresponding right is void.⁸³

The distinction between perfect and imperfect rights and duties is clearly set forth in the EIU within the context of the concept of authority. When authority is perfect, grounds exist for action in a court of law; when imperfect, no such redress is possible. Definition VIII holds that a right is an active moral power belonging to a person to receive something from another as a matter of necessity. A perfect right thereby gives rise ipso facto to grounds for action in a civil court, and corresponds to perfect obligations, or duties.

An imperfect right is less easily characterized. Pufendorf does, however, provide a definitive explanation as follows: “when something is owed some one by another in such wise that, if he should deny it, he would, indeed, be acting unfairly, and yet the injured party would by no means be

⁸² ING p. 390.

⁸³ See *ibid*, p. 421.

receiving a wrong which would furnish him with an action against the injurer...Thus I am able neither to compel another to do me benefactions, nor to bring an action for ingratitude against another, although, de vero, he is doing wrong who neglects an occasion for doing benefaction to others or does not return the favour as best he can in requital for benefactions received.”⁸⁴

He gives a good example of the operation of imperfect rights and duties by citing the case of a person who has some unusual object in his home or garden. Such a person is under an obligation to admit all who wish to see it; but those who have been admitted, should, by the rule of custom, regard it as an unowed kindness.⁸⁵ In this way an imperfect right is something of a passive moral quality and as such it frequently lapses by not being asserted or exercised. Pufendorf explains that it is often not fitting “for our person or lot” that we be indebted to others for kindness, and we are often unable to receive one, unless the other person receives its equivalent from us.⁸⁶

In the ING, Pufendorf introduces the concept of obligation (obligatio) separate from the concept of duty (officium). The basic distinction is that an obligation is an inner drive to satisfy the requirements of the law whereas the duty is simply the conduct which results from the obligation. Pufendorf defines obligation as “an operative moral quality by which someone is bound to furnish, allow or endure something”⁸⁷ and makes distinctions amongst obligations on the basis of their specific

⁸⁴ EIU, p. 59.

⁸⁵ See ING, p. 364.

⁸⁶ See ING, p. 379.

⁸⁷ EIU, Definition 13.

features as congenital (innate) or adventitious (acquired); equal or unequal, universal or particular, public or private, limited or unlimited; perfect or imperfect, permanent or temporary; mutual or non-mutual. Throughout his discussion he is particularly concerned to determine clearly what obligations on the part of rulers are binding upon the individual members of a state, and for what reasons. His concern is essentially therefore, with perfectly mutual adventitious obligations, i.e. contracts. Let us examine these aspects of obligation more closely.

Innate and acquired obligations are divided according to their origins. As congenital obligations, Pufendorf holds that it is incumbent on all moral beings to acknowledge God as the Supreme Lord of the Universe, to recognize his Rule and observe the laws he has given to us, to apply the law of nature in relations with one another and to live a social life. Adventitious or voluntarily acquired obligations are assumed after birth or they may be enjoined by the authority of a superior, by law.

In consideration of their subjects, obligations can be equal or unequal (as when a man may owe something to a fellow on one hand or to a superior on the other - a problem which, incidentally, both Hutcheson and Bentham found too difficult to resolve), unequal (as in man's subjection to God), public or private, or limited (as for example, to a wife, son or servant) and unlimited (as a citizen is bound to a state). As regards duration, obligations can be perpetual, (as our obligations to God) or temporary, as is often the case in respect of adventitious obligations, such as those of the young towards their parents.

Interestingly, he cites marriage as an example of a perpetual obligation as long as the essence of the conjugal pact has not been violated. But the relationship seems to be rather one-sided as he defines it in terms

of the principle that the husband grants to the wife the right to his body, and the wife to the husband, and she, besides to no-one else. There are many references of this type in Pufendorf's works which confirm his view of marriage as an unequal relationship. The explanation may lie in a wish to avoid facing the objection that insistence upon strict monogamy would have found the ancient patriarchs exposed in breach of the natural law. According to his doctrine, therefore, polygyny is not against the natural law, although positive law, whether human or divine may prohibit it.

Mutual obligations require one to furnish the equivalent of that which is owed, whereas non-mutual obligations are not reciprocal. God provides for our needs and welfare, he notes, but is under no obligation to do so. All men, however, are in a situation of mutual obligations with each other. Mutual obligations can be perfectly or imperfectly mutual. They are imperfectly mutual when imperfect duties arise in place of perfect ones, as when citizens have perfect duties towards their prince whereas he has only imperfect ones towards them. An imperfectly mutual obligation may also arise when one person commits himself to another but does not require the other person to bind himself in the same way.

Perfect duties have a stronger binding force than imperfect duties; they can be justly enforced by coercion, if necessary. Perfect duties also have a rather narrower extension.⁸⁸ Imperfect duties he views as "a kind of voluntary impulse arising from man's good nature."⁸⁹ He notes elsewhere that duties can be divided into those of justice, i.e. perfect duties, and those of kindness and generosity. The criteria he fixes for acts of

⁸⁸Meinong, it will be recalled, made the same point.

⁸⁹ ING, III, 4, 90.

kindness and generosity are that they bring no harm to anyone, that they are not beyond one's means, and that they are proportionate to the worthiness of the recipient. Together with Grotius he holds that perfect duties have priority over imperfect ones in the sense that nothing can be generous or kind, if it is not already just. Kindness and generosity, therefore, somehow include the idea of justice within themselves.⁹⁰ He makes it clear that there is an effort of calculation involved in making judgements about these matters.

The typical example of a perfect duty is illustrated by cases of promise-making. A perfect duty is contracted for example when "a man declares his will for a future time to perform something for another, but also shows that he gives him a right, whereby the other is fully entitled to demand of him the thing promised."⁹¹ Imperfect promises, he notes, do not give rise to such rights. "We call it an imperfect promise when a man declares his will to do a favour for another at a later time by some sign sufficient to show the necessity of his perceiving in his declaration, that is, he clearly declares his willingness to be obligated, yet in such a way that no right is given the other man to require the thing of him. This is like what happens in the manner of a favour, when the man who receives a kindness is obligated to show a grateful attitude, which, however, his benefactor cannot demand by his own right."⁹² Pufendorf actually gives his version of what a typical imperfect promise would look like as follows: "I have made up my mind in all seriousness to do this or that for you, and I hope that

⁹⁰Cf. Schumaker's concept of justice as including both perfect and imperfect rights and duties. Schumaker, 1992, p. 63-67.

⁹¹ *ibid*, III, 5, 7.

⁹² *ibid* III, 5, 6.

you will take my word for it.”⁹³ Under such terms, he says, the promisor “is obligated to do something, more by the law of veracity than the law of justice, for he was willing to have some obligation laid upon himself, yet he was unwilling to be compelled by the other person to do it. For the spirit of men is so generous that they would rather appear to be brought to perform some duty by the impulse of their own virtue, than by some right of another.”⁹⁴

Pufendorf ascribes priority to the claims of perfect obligations when they are seen to overlap with duties of imperfect obligation. Interestingly, his approach prefigures some contemporary problems in utilitarian theory. Peter Singer claims, for example, that our duty to relieve third world suffering is pressing and primary and that the need to redraw the traditional distinction between duty and charity (in favour of charity) is a direct result of applying a universal and impartial standard of moral obligation.⁹⁵ Pufendorf would respond that our duty to relieve third world suffering is just as binding as our duty to repay a personal debt, but that, as an imperfect duty, we cannot act on it to the exclusion of our perfect duties, i.e. to care for our own welfare and those directly dependent on us in the first instance.

Pufendorf also rejects the view he attributes to the French philosopher François Connan that it is wrong to restrict the application of the principles of duty in order to leave room for the application of various virtues. Connan claims that it is entirely right to leave something to a man’s honesty and liberality, and not to claim and demand everything with

⁹³ *ibid.*

⁹⁴ *ibid.*

⁹⁵ See Singer, 1971-2, p. 232 ff.

the strictness of an obligation, so to allow, as it were, for virtues to shine forth in dealings amongst men. Pufendorf counters this view by stating that an ample display of liberality is shown “by offering a man the right to demand of you what you would perfectly well deny him”⁹⁶ i.e. by converting an imperfect right into a perfect one and in contending that the values of constancy outweigh those which, in allowing for full play of the possible exercise of virtue, neglect the more reliable attractions of the stability of law based upon the fulfillment of perfect duties. He also balances this deontic approach by stressing the overall value of the common good, at the expense of individual displays of virtue: “...since so many promises pass between men from their standing in need of each other’s assistance, it is more to the interest of human affairs that men keep their word with less attendant praise, than a greater number of men be deceived by the inconstancy of their fellows.”⁹⁷

All men are equal, he states, echoing Hobbes and Grotius, not only because any man can cause the death of any other, but because all men come into the world and leave it in the same manner. Furthermore, men are mutually interdependent; they must be treated by each other as equals, with particular attention paid by all to the rights of individual men. Mutual interdependence gives rise to the exercise of mutual duties. When perfect duties arise, so do corresponding rights. But some rights (and duties correlated with them) have priority over other duties because imperfect duties cannot conflict with perfect ones. As we have seen, acts cannot be kind if they are not also just. Within the state of nature, the only guides to

⁹⁶ *ibid.*, III, 5,11.

⁹⁷ *ibid.*

action are force and fraud, but outside it, rights arise, as explained above, because of man's social nature and the interdependence of human beings. The right of a man to take his own life seems to be in some sense the ground of another man's duty not to take it. In other words, the duty not to take a life is secondary to the right to life in the first place. But it is also clear that, for Pufendorf, the existence of a right gives rise to a corresponding duty.

Perfect rights and duties deal, in the main, with the "mere existence" of society, where contracts are honoured to the letter, but where there is no claim of kindness, or considerations of generosity or gratitude.⁹⁸ The contrast is between 'esse' and 'bene esse.'

Lastly, we observe that the law of nature is itself phrased in the form of an imperfect duty. Moore's version of it in DOHEC reads that "everyone must cherish and maintain sociability, so far as in him lie;" Barbeyrac's translation is rather more forceful: "chacun doit travailler, autant qu'il dépend de lui à procurer et à maintenir le bien de la société humaine en général." This is stated in contrast to the first absolute mutual duty of man towards his fellows, which is presented in a negative, perfect fashion: "il ne faut faire du mal à personne."

The importance of the classical distinction continues to be relevant for current discussion of these issues. G.R. Grice has outlined a comprehensive theory of moral judgement on the basis of the distinction

⁹⁸"Perfect duties, or duties of justice, need not be carried out in a loving spirit. They are fully executed when a perfect right is respected, and the man who regularly carries out all his perfect duties is a just man even if he dislikes acting justly. What matters is performance, not the spirit behind it." Schneewind, 1990, p. 50.

between perfect and imperfect duties very similar to that advanced by the modern natural law philosophers, but he reworks these categories in terms of the notions of 'basic obligation' and 'ultra obligation.' Even without mentioning such terms as 'perfect duties,' or 'imperfect obligations,' Grice's formulation of the categories of basic and ultra obligations places him squarely in the tradition of the natural law theorists. Like them, he makes no distinction between imperfect duties and supererogatory acts, and includes supererogatory paradigms within the category of ultra obligations. Grice holds that the concept of obligation is a complex one with several distinguishable modes. The logical difference between basic obligation and ultra obligation, he states, is that if A has a basic obligation to do an action X, then B has the right to A's doing X and vice versa; whereas, if A has an ultra obligation to do X, B does not have a right to A's doing X: A's ultra obligation to B is to do more for B than B has a right to expect. These remarks are actually more in line with Grotius than with Pufendorf, as it was the former who taught that a right gives rise to a perfect obligation and that an imperfect obligation is not based on a right, but rather on an aptitudo, or merit. Grice also notes that the proposition "A has a basic obligation to B" is logically equivalent to the proposition "B has a right against A." This observation recapitulates the modern natural law distinction that perfect rights are always matched by perfect duties, without the subtleties advanced by the modern natural law theorists.

A basic obligation, according to Grice, implies a right and is in turn implied by one. An ultra obligation, however, is concerned with the waiving, as opposed to the exercise of a right. Grice says it is essentially a matter of character as much as anything else. As examples of ultra obligations, Grice cites the decision of Albert Schweitzer to forego

distinction in the worlds of scholarship and music to become a medical missionary in one of the most remote and deprived places on earth. He also cites the example of Sir Philip Sidney, who, though mortally wounded at the battle of Zutphen, when offered a drink of water, declined in favour of a wounded soldier well beneath his rank. The ground of such actions, maintains Grice, is not to be found in any relationship between rights and duties, since the native inhabitants of Lambaréné had no more right to medical services than Albert Schweitzer had a duty to provide them. Grice explains that “the ground of a proposition of ultra obligation is a proposition whose truth depends on the character of the man,”⁹⁹ although he does not offer any suggestion as to what such a proposition might resemble. According to Grice, ultra obligation corresponds to “ethical morality,” whereas basic obligation corresponds to “legal morality.” These terms are more than just reminiscent of the categories Kant developed in the *Metaphysics of Morals* whereby he distinguishes between the “Theory of Virtue” dealing with matters of ethics, and the ‘Theory of Right “ (or Justice) which accounts for matters of natural jurisprudence.

Grice also accepts that there is a basic obligation of limited beneficence, and claims that we can speak properly of having a right to expect limited help from one another. Grice thus follows Grotius and Pufendorf in their teaching that we are not to insist upon our rights (in this case, our rights to go about our own affairs and refrain from offering help) in matters of no great moment, that is, when it is not very inconvenient to waive such a right. Similarly, Grice says that the basic obligation of beneficence is not very exacting. It is quite another matter

⁹⁹Grice, p. 36.

for duties of ultra obligation, where there seems to be no natural limit on what can be done. Nonetheless, such happenings are common occurrences. Grice reports that “many actions which we witness daily, and many more which we can imagine go far beyond the requirements of limited beneficence; they give more help to others than they are required by right or they give help to others in circumstances in which they have no right to help at all.”¹⁰⁰ This contention assumes that strangers need rights in order to be helped, and seems to attract the same type of criticism directed at the view that strangers have no right to be rescued,¹⁰¹ in that the burden of responsibility in both cases lies with the moral agent quite independent of his moral decision, that is, in this case, his right not to exercise it.

Grice draws what he terms an “interesting parallel” between the concept of basic obligation and the Mosaic law on one hand, and the concept of Christ’s ethical teaching, on the other. Grotius also drew this parallel, stating that with specific exceptions, including those instances in which Jesus contradicted Jewish law, there cannot be devised any case in which that which was formerly instituted by the law of Moses should not be within the lawful sphere of instituted law. Grotius also held that whatever is commanded by the law of Moses, connected with the virtues which Christ requires from his disciples, that, if not more is due from Christians. The rabbis of the Talmud and the Mishnah also taught that the broad spectrum of commands in Deuteronomy 17:20 “Righteousness, righteousness, shalt thou pursue,” and Deuteronomy 6:18: “Thou shalt do what is right and good in the sight of the Lord” implied an obligation to go

¹⁰⁰ibid, p. 60. Surely, he means no duty to help at all.

¹⁰¹See Murphy.

beyond the letter of the law and “demand supererogatory behaviour from the Jews.”¹⁰² Pufendorf, for his part, held that the Decalogue is largely negative because of the original sin of man, but that the new Covenant of Christ opened the path of virtue to all. Grice holds that Christ’s teaching is largely comment on the Mosaic law. Christ requires that those who would follow him not only obey the Mosaic law, but also forego their rights under it. His account of ultra obligation, therefore, like the explanations of the modern natural law philosophers, recognizes supererogatory paradigms, but no category of moral actions which distinguish between small commitments beyond perfect duties, and ultimate ones. The following chapter explores the issue of imperfect duty in detail. Distinctions between imperfect duties and supererogatory acts emerge in Chapter Four and are summarized in Chapter Five.

¹⁰²See Kellner in Singer, 1991, p. 88.

CHAPTER FOUR

IMPERFECT DUTIES: RESPONSIBILITIES FOR CARING

This chapter develops the concept of imperfect obligation by examining the distinction between perfect and imperfect rights and duties on one hand, and imperfect rights and duties in relation to supererogatory acts on the other. It begins with a contemporary account of imperfect duties as generalized reciprocity. The chapter then examines Kant's assessment of the distinctions between perfect and imperfect duties, together with a modified Kantian view that addresses the vexing issue of the imperfect duties of collectivities towards individuals and other collectivities. Dominant realist views are explored and tested in relation to various actions which might be considered as imperfect duties of collectivities, namely immigration policies, development assistance and international humanitarian assistance and peacekeeping activities. The chapter closes with a study of the question of unilateral nuclear disarmament as a particular example of an imperfect duty of nuclear weapons states.

Generalized Reciprocity

Grice, it will be recalled, developed distinctions which were very similar to those propounded by the modern natural law philosophers, but which made no reference to perfect or imperfect rights or duties. Schumaker complains that "many have taken the doctrine up in ignorance

of its history”¹ with unsatisfactory results when in fact the doctrine can be useful, “especially in the job of mapping the limits of moral obligation.”² Some of these unsatisfactory results are produced when campaigns for extending rights of special interest groups to specific services are advanced and interpreted in the language of perfect rights. Such ventures are best seen as social goals, and most discussion of imperfect rights is best seen in such a light, rather than as perfect rights implying perfect obligations of individuals or the state to provide services for such groups. Disagreement over these and similar claims arises because only perfect rights can be enforced by law, thus requiring some other party or parties to respond as a matter of duty. Imperfect duties, on the whole, are not so correlated with rights. Smith may be bound to repay Jones a \$10 debt, but he is not as firmly bound to treat him in a kindly way. Jones, however, may wish to be treated in a kindly manner, but cannot insist on this as an imperfect right. Of course, Smith is indirectly bound, by way of imperfect duty, to treat Jones in a kindly way. This obligation to provide kindly treatment has more force than Smith’s right to demand it, if only because Smith has no such right, no jural claim.

Schumaker provides a list of 25 distinctions between perfect and imperfect duties,³ claiming that the variety of distinctions revealed by the

¹Schumaker, 1992, p. 3.

²ibid.

³Schumaker’s list of 1992 is an expanded treatment of the list he gave in his 1970 work. His admittedly incomplete list, which includes several distinctions mentioned by Pufendorf is as follows:

culpable/supererogatory
 legal/moral
 correlative/non-correlative
 negative/positive
 universal/personal
 powers/aptitudes

important /trivial
 specific/vague
 ideal/realistic
 can be completed/unending process
 sanctions/no sanctions
 outer/inner

historical record indicates a division into three types of rights and duties - approximate (inchoate), incomplete (truncated) and indefinite. Stoic ethics provides an example of the first type. Cicero's depiction of the officia media of Panaetius as inchoata officia reveals an ethics of growth and compromise. Its demands change with one's age and development, abilities and station in life, and recalls the work of Lawrence Kohlberg in charting the growth and development of moral judgement by stages. Truncated rights and duties are incompletely enforceable. They concern counsels and exhortations, more than laws or rules. Their punishment is the disapproval of others or the reproach of conscience. Truncated rights and duties are especially remarkable both for the absence of sanctions or enforcement and for the insight they reveal that important and natural relationships vanish in the presence of sanctions or enforcements. Indefinite rights and duties, he says, are so general and so vague that they fail to make clear exactly what is allowed or required. Because they are less than fully determined, they allow for discretion. The ways of honouring parents are matters best left to their children: no one can say how to do this. Such rights and duties contrast markedly with negative rights and duties which can be clearly defined and determined. Schumaker concludes that "many of the rules of morality are loose and inaccurate - and inescapably so."⁴ Apart from the

commands actions/commands ends
 are discharged/are honoured
 contractual/natural
 absolute rectitude/relative rectitude
 primary/secondary
 justice /love

are violated/are neglected
 formal/material
 strict law/equity
 innocence/beneficence
 very stringent/not so stringent
 opposite cannot be thought/opposite cannot
 be willed. See *ibid* p. 4.

⁴*ibid*, p. 18.

rules of casuistry, and following on from Aristotle's cautionary note that "we must be content in practical reasoning to 'indicate the truth roughly and in outline' almost all the rights and duties enunciated by philosophers and theologians are relatively indefinite, providing only a rough outline and giving only uncertain guidance."⁵

Urmson, it will be recalled, pointed to the existence of saints and heroes as matters of fact which had been neglected by philosophers when preparing their explanatory frameworks for moral action. Similarly, Schumaker points to the work of social scientists in accounting for acts of imperfect duty under the general rubric of 'rendre service' which is, it is claimed, to be found in virtually all human cultures.⁶ The concept of balanced reciprocity requires debts and favours to be equally returned within a fixed period. Generalized reciprocity, on the other hand, requires that one 'render service' without calculating reciprocal advantage, on the understanding that the balance of service and counter service is spread out over time: advantages are only approximate, or indefinite. The absence of a legal guarantee to repay such services seems to be of the essence of these relationships.

Now such relationships fall short of unadulterated altruism or the supererogatory ethics of self-sacrifice. They lie between the constraints of perfect duties, i.e. the ethics of enforceable obligation and the 'higher flights' of altruism. Interestingly, in accordance with their positioning mid-way between rock bottom duties and the higher flights of morality of

⁵ibid, p. 19.

⁶Other descriptions of these actions include "generalized reciprocity, or indefinite reciprocity, concealed reciprocity, prescriptive altruism, social exchange, swapping or the gift relationship." See ibid, p. 23.

Urmson, imperfect duties are subject both to the rhetoric of obligation, and of altruism. Because imperfect duties, are nonetheless duties, the language of obligation is apposite. But because such actions do aim, as it were, at genuine altruism, while falling short of it, the rhetoric of the supererogatory also surrounds such duties. Generalized reciprocity says Schumaker, “is not yet unadulterated altruism; but it is a sort of school of morality, leading from the relatively petty life of rights and duties to the nobler life of the gift.”⁷

Kant’s Formal Considerations

Kant’s approach to the doctrine of perfect and imperfect duty is conditioned by his ethical theory in its wider scope. The relationships between the *Groundwork*, the *Critique of Practical Reason* and the *Metaphysics of Morals*, the *Lectures on Ethics*, and other works, including the *Critique of Pure Reason* where Kant outlines his theory of morality are still matters of study for scholars and the definitive study of Kantian ethics remains yet to be written. What is clear however is that Kant was concerned with moral philosophy from the beginning of his career until its end and that his ‘rigoristic’ views of the early critical works were to an important extent moderated in his later works, particularly in the *Metaphysics of Morals*. Duncan, quoting Paton, notes that Kant’s Doctrine of Virtue in the *Metaphysics of Morals* reveals him as the philosopher “not of rigorism, but of humanity.”⁸

⁷ibid, p. 34.

⁸Duncan, p. 2.

A common thread running through all Kant's writings on ethical matters is the importance given to the concept of personal decision-making about morality.⁹ It is eminently "choiceworthy"¹⁰ as a moral theory. In his pre-critical work, he posits the "goodness of the free will" as the foundation of the general principle of morality, a theme elaborated in the *Groundwork*. The elaboration of the principle of the categorical imperative and its practical application as presented in the *Groundwork* and the *Critique of Practical Reason* was intended to provide content in a manner consequent upon, and in accordance with, the structure of the theory about making decisions. The *Metaphysics of Morals*, together with the *Lectures on Ethics*, represents Kant's approach to a system of normative ethics. His critical works in ethics constitute the *Groundwork* and the *Critique of Practical Reason*. The system is divided into a priori knowledge as is found in both the *Metaphysics of Morals* and partly in the *Lectures on Ethics*, and empirical knowledge obtained from various sciences. Some material in the *Lectures on Ethics* falls into the latter category. Scholarship has largely been confined to the critical works on moral theory to such an extent that Mary Gregor notes that the *Metaphysics of Morals* is "almost completely ignored."¹¹

Although Kant approaches these works with different objectives, they are broadly supplementary. Nonetheless, in some respects, the results are surprising. His critical works leave no room to account for the character defects of a miser, the arrogance of a scholar, let alone the

⁹See especially *Critique of Practical Reason*, p. 162.

¹⁰J. O. Urmson uses this neologism in referring to Aristotle's moral theory of character excellence whereby a man who lives the most eudaemon life, also lives the most "choiceworthy" life. Urmson, 1988, p. 27.

¹¹Gregor, p. xi.

abasement of self-abuse, although there are clear indications in the *Lectures on Ethics* that Kant's intentions were pedagogic from the outset and that he is vitally concerned with the process of character-building, because only through it is virtue attained. This is a major theme of the *Lectures on Ethics*, which contains extensive passages on various types of duties to oneself.

Teale notes that the pietistic tradition of Kant's background was concerned, like Methodism, with personal perfection in the sense of freedom from sin and a life of good works. In Kant's early work, the Prize Essay of 1761, he argues that the basic principle "do the most perfect deed you can" is the primary, formal ground of all obligation to act and that taken together with the same formulation in a contrary form, i.e. "omit that whereby you hinder the greatest possible perfection," provides the formal basis for all practical philosophy. Teale draws attention to the importance of Kant's task in this respect as reformulating the Golden Rule of Christianity¹² and particularly in giving effect to Christ's injunction to "be perfect, even as your Father in heaven is perfect."¹³ Kant's theory as later formulated in the categorical imperative shows that he was most concerned to take account of actions which aim at perfection.

This concern with the perfect is also strongly upheld in the *Metaphysics of Morals* where Kant posits one's own perfection as an obligatory end, a "duty of virtue," that is, a duty to be virtuous. Moral agents are obliged to perfect natural powers of the mind (logical reasoning) the soul (imagination and memory) and the body (essential for the pursuit

¹² See Teale, p. 16 and p. 30.

¹³Mt 5: 48.

of all rational ends). But because perfection on all these scores is an inherently unrealizable ideal,¹⁴ and an end of action, there is a degree of latitude in how these ends are to be pursued. The point here is that Kant recognized a need to set out a rigorous statement of the moral law in terms of its obligatory nature and ability to bind all moral agents, and that he realized that in providing content to the moral life, a distinction needed to be made between between the desirable and the possible. He does so by determining that “ought implies can.” Moral agents must judge that they can do what the law tells them unconditionally that they ought to do.¹⁵

Before outlining the concept of latitude, in terms of the spirit of the moral law however, let us briefly state Kant’s position on what could be termed the letter of the moral law. Those authors not familiar with the *Metaphysics of Morals* or the *Lectures on Ethics* might well be led to form harsh judgements about Kant’s approach to moral philosophy. The theologian Paul Lehman, for example, terms Kant’s moral teaching a theory of “absolute ethical legalism.”¹⁶ It is in the *Groundwork* where Kant permits the formulation of such judgements. According to Kant, the categorical imperative can be simply expressed in three different ways; i) from the point of view of the individual, in his relations with his conscience, ii) with other people with whom he may have personal contacts, and iii) with humanity as a whole, or what Kant terms the totality of the system of ends. Firstly, one should apply the reasons upon which moral actions are based “across the board” to see if they can be applied

¹⁴“Virtue so shines as an ideal, that it seems, by human standards to eclipse holiness itself...” *Metaphysics of Morals*, p. 199.

¹⁵See *ibid*, p. 199.

¹⁶See Lehman, p.124 ff.

universally, by everyone in similar circumstances: if not, then such reasons should be discarded and new ones found and tested. Secondly, one should treat other people always as subjects and never as objects. Thirdly, because all individual autonomous moral agents are completely free, one should treat them all as a free association of equals, or ends in themselves. The principle of morality is situated in the moral agent rather than with qualities inherent in conduct, or goals of conduct, such as goodness or happiness, or even results obtained by such actions.

We are now in a position to see how Kant's interpretation of the spirit of the moral law, as opposed to its letter, unfolds in practical human life. Basic to this is his distinction between perfect and imperfect duties which transformed the conventional understandings of the dichotomy in the *Lectures on Ethics* to his mature view in the *Metaphysics of Morals*. In the latter work, his major attempt at providing content to moral theory, he contends that the fulfillment of broad duties is a merit, but their transgression is not an offence. Broad duties do not permit exceptions to maxims approved by the categorical imperative, but do allow the modification or limitation of one maxim by another.

This formulation has led to controversy about its adequacy. Susan Hale, for example has recently claimed that "the precise definition of Kant's own distinction is obscure."¹⁷ While it is clear that Kant's formulation is less than clear and distinct in all respects, his analysis does move understandably from the classical distinctions of Pufendorf and others, namely that perfect duties are those which can be clearly stated and enforced by positive law, whereas imperfect duties consist of all those

¹⁷Hale, p. 275.

other ethical duties which do not lend themselves to enactment, regulation or enforcement. With this background to the distinction clearly in mind, Hale's objection loses something of its lustre.

Kant teaches that there is an imperfect duty to be virtuous. Duties of virtue regarding individual perfection and those regarding the happiness of others are both divided into categories of physical and moral well-being. The duty to promote all human capacities to the fullest is set before moral agents as an end established by reason, but because it allows of broad application, reason cannot prescribe how far individuals should go in developing particular faculties. Similarly, it is a duty of virtue to sacrifice part of one's welfare for others without any hope of recompense, yet it is impossible to set limits or guidelines as to how much one should contribute in commitments of time, resources or personal prestige. Likewise, we are enjoined to cultivate morality within ourselves not merely in terms of legality, but also in its broad application. Our duties to contribute to the happiness of others by promoting their moral well-being is also of broad application as there are no limits within which to care for the moral satisfaction of others. Every man possesses moral feeling, just as consciousness of obligation presupposes it.

As a matter of feeling, love for others cannot be a matter of duty, as is the obligation to benefit mankind according to our capacity to do so. The second great commandment¹⁸ therefore, is interpreted by Kant in the sense of beneficence which will induce a love of mankind. Virtue resides only in the attitude of will which posits universally valid maxims for action; "Virtue is the moral strength of man's maxims in fulfilling his

¹⁸"Love thy neighbour as thyself." Mt 22: 39.

duty.”¹⁹ Although there are indeed duties to be virtuous, virtue is not simply a duty because there cannot be a duty to possess it. Rather, virtue is its own reward as an end that is also a duty. Echoing Pufendorf, Beck notes that without the two poles of sensuous inclination on one hand and pure rational principle on the other, virtue “could not arise.”²⁰

Principal among the virtues is the requirement to maintain self-control, regarding which Kant states that its strength “is the mind at rest, with a deliberate and firm resolution to bring its law into practice. But not everything is the subject of virtue or its opposite. Kant specifically leaves room for morally indifferent acts and situations (*adiaphora*), roundly chiding the over-scrupulous person who “strews all his steps with duties, as with man-traps”²¹ and who can thus be accused of “*schwärmerische Tugend*” or “fantastic virtue.”²²

Kant explains that ethical duty must be considered broad, since no external laws have relevance and because ethical duties are based on internal laws for maxims, not external laws for actions, as in the case of the doctrine of right, or jurisprudence. Mary Gregor points out that in the *Handschriftliche Nachlaß*,²³ Kant concludes that perfect duties to oneself according to their content do not belong to ethical duties at all, but to legal duties, but that “in themselves” they belong to the Doctrine of Virtue.²⁴ In so far however as they relate to our “inner juridical duty” and concern themselves with our own person, they are to be considered perfect duties,

¹⁹*Metaphysics of Morals*, p. 197.

²⁰Beck. p. 227.

²¹*Metaphysics of Morals*, p. 209.

²²*ibid.* “Fanatical virtue” may be closer to Kant’s meaning here. See Chapter Two above.

²³*Vorarbeiten zur die Metaphysik der Sitten*, H.N. (23) p. 385.

²⁴Gregor, p. 116.

i.e. we have no latitude in recognizing them and acting on them. They are not, however, considered as matters of jurisprudence, or indeed of ethical duty, but rather as “derived from the first principle of juridical duty and that therefore they belong neither to jurisprudence nor to ethics, but rather to moral philosophy in general.”²⁵

Kant introduces the concept of perfect duties to oneself by referring to the epistemology of the *Critique of Pure Reason* to explain how a person should regard himself as a natural being possessing reason and acting in the world (homo phenomenon) as well as endowed with internal freedom (homo noumenon). It is as homo noumenon that a man can be obligated to himself. Considerable attention is then given to the vices which stem, according to Kant, from man’s animal nature (suicide, self-abuse and intemperance) and to those which arise out of his situation as a moral being (lying, avarice and servility).

Kant’s discussion of suicide in the *Metaphysics of Morals* is remarkably more flexible than his account in the *Groundwork*, in which the problem is restated as to whether the principle of self-love can become a universal law of nature. This ‘absolutist’ position is also at odds with the casuistical treatment of the theme in his earlier discussion of it in the *Lectures on Ethics*, where he acknowledges at least one justifiable case of suicide - that of Cato.²⁶ But in the *Metaphysics of Morals* he discusses five other cases which seem to justify suicide under certain circumstances. There are some structural difficulties with most of the examples Kant gives, however. Three of the examples are in fact matters of state, i.e.

²⁵ibid.

²⁶This is Cato the Younger who killed himself at Utica in North Africa after the failure of the republican cause at Thapsus in 46 B.C.

political, rather than ethical issues and two others are essentially medical questions regarding mental stability under conditions of extreme stress.²⁷ Of course, many moral decisions involving “life or death” consequences are indeed taken under conditions of stress and mental instability. Perhaps Kant is showing respect, in these examples, for the human factor which many critics accuse him of burying under the logical and legal juggernaut of the categorical imperative.

Kant’s treatment of the remaining perfect duties regarding one’s animal nature (self-abuse and intemperance) are consistent with Gregor’s comment that the criterion used by Kant in determining these vices is that the actions identified impair or destroy natural powers and so the capacity for moral action. Regarding the three perfect duties to oneself as a moral being (i.e. avoiding lying, avarice and servility), Kant retains the rigorous treatment, in line with his comments on truthfulness elsewhere.²⁸ Lying he considers to be the greatest vice of a moral being; it does not have to have harmful effects on others to be blameworthy, as is evidenced by “internal” lying or self-deception. Insincerity is a form of unconscientiousness and is also to be censured as it leads to untruthfulness. Unlike his treatment of vices stemming from man’s animal nature, Kant offers no real casuistical insight into the problem of truthfulness. This contrasts with the extensive, sensitive treatment of the issue in the *Lectures on Ethics* where he deals with many of the superficial objections raised against his teaching.

²⁷Nonetheless, the example of the person bitten by a mad dog who takes his life in order to spare others from harm which he knew to be coming on in the madness of hydrophobia presents a real challenge to Kant’s theory, as he rightly recognizes. See *Metaphysics of Morals*, p. 220.

²⁸See especially the *Groundwork, Religion within the Limits of Religion Alone and On the Old Saw*.

Sport is often made of the ultra-candid person to show how Kant's argument is inherently untenable. But in order to preserve a measure of reserve in our dealings with others, Kant states that it is not necessary to wear our conscience on our sleeve to advertise our faults.²⁹ Kant makes it perfectly clear that sincerity, or speaking the truth, is of quite fundamental importance and that its lack produces nothing but "inward hypocrites."³⁰ But Kant's examples of exceptions to the inward law against lying in the *Metaphysics of Morals* seem trivial or contrived. His teaching on this score has attracted much critical comment, but perhaps none with such effect as the contemporary school of situation ethics.

Paul Lehman cites the position of Dietrich Bonhoeffer regarding truthfulness when he states "the more complex the circumstances of a man's life are, the more responsible he is; and the more difficult it is for him to tell the truth."³¹ Lehman attacks Kant's ethical absolutism on the basis that the categorical imperative, or the "ought" factor, as he terms it, is not the primary ethical reality. Rather, the primary ethical reality is "the human factor, the human indicative, in every situation involving the interrelationships and the decisions of men."³²

It is noteworthy that the duty of truthfulness is considered in the *Lectures on Ethics* to be an ethical duty towards others, whereas in the

²⁹"No man, therefore in his true senses is candid...If all men were good, there would be no need for any of us to be reserved; but since they are not, we have to keep the shutters closed." *Lectures on Ethics*, p. 224.

³⁰"Oh sincerity..." apostrophizes Kant "I can admit, though it is much to be deplored that candor (in speaking the *whole* truth which one knows) is not to be found in human nature. But we must be able to demand *sincerity* (that *all one says* be said with truthfulness), and indeed if there were in our nature no predisposition to sincerity, whose cultivation merely is neglected, the human race must needs be, in its own eyes, an object of the deepest contempt." *Religion within the Limits of Reason Alone*, p. 178.

³¹Lehman, p. 129.

³²ibid, see p. 130

Metaphysics of Morals, Kant classifies it a duty towards oneself. Late in his career, he published a short paper defending his 'absolutist' theory against the French philosopher Benjamin Constant who took issue with Kant's rigoristic approach to truthfulness, by proposing to amend the maxim of truthfulness so as to retain a duty to tell the truth only to those who had a right to hear it. By arguing that a man is responsible for the consequences of lying, but not of telling the truth, Kant concludes that no man has a right to lie, for truth cannot be given to some and denied to others, and also by showing that, if one breaks silence, absolute veracity is an unconditional duty.³³

Kant's treatment of avarice is also noteworthy, if only because his discussion of this particular personality characteristic reveals as rich and detailed a psychological texture as Aristotle's description of its opposite, magnificence. It is at this point that Kant deals with supererogatory ideas, although his general theory of duty excludes their possibility as types of moral experience in straightforward ways. But he does appear to accept the concept of "offence" as a permissible bad act, as contemporary writers such as Chisholm would define it, but does not find any validity to the idea that there may be any moral requirements beyond

³³This exchange prompted considerable discussion which has continued to the present. Jules Vuillemin supports Constant to the extent of suggesting that Kant's argument is valid only for holy wills in a holy society, i.e. where there is no danger of collision of duties, but that in the real world, where such collisions do occur, his system must be adjusted to accommodate such possibilities. Truth can after all be spoken out of malice, and anything but the spoken truth may well bring about substantial benefits for many people. Vuillemin suggests a restatement of the second version of the categorical imperative in approximate English, and quite un-Kantian language as follows: "Act so that the maxim of thy will can always at the same time hold good as a universal law and thou beware lest another's will should use thine maxim in violation of another law." Vuillemin, p. 42. But this interpretation overlooks Kant's view that holy wills have no duties. The consequence of this point is that Vuillemin would in effect be obliged to defend the idea that Kant's argument is valid only for wills that are under no obligation at all.

the fulfillment of duty. In reference to Aristotle's teaching of the Golden Mean, he finds it tautological to contend that one can do too much good and, more revealingly, also says that it is not good to do more or less than is good. One cannot do more than tell the truth: just as there is no sliding scale of vice and virtue, so is there no sliding scale between lying and truthfulness, although there may be between frankness and reserve. Duties of virtue are of broad latitude in their interpretation and application. He who obeys the principles of virtue does so necessarily in greater or lesser degree as prudence prescribes, and may well thereby commit a fault (peccatum) or, as Chisholm would say, an offence, but does not commit a vice. Perfection is a goal to be sought after, but Kant recognizes that its achievement exceeds human powers, introducing nonsense or fancy into the conception of perfect virtue. "For to be much too virtuous, i.e. to adhere too closely to one's duty would be like making a circle much too round, or a straight line much too straight."³⁴

Kant's teachings about imperfect duties are therefore divided into those which apply to oneself and those which apply to one's relations with others. The development of one's capacities and capabilities of mind, spirit and body are of course imperfect. How best to do this, to what degree and in what measure are all matters of individual rational responsibility and therefore of broad latitude, unlike the strict duty to improve one's moral situation by heightening moral perfection. The Pauline appeal to seek praise and virtue³⁵ is a sufficient duty in itself, however much it may be attended by a multitude of virtues of heterogeneous quality.

³⁴*Metaphysics of Morals*, p. 252.

³⁵Col 3: 1-17.

Apart from duties of perfect obligation covered by the Doctrine of Right, duties to others are all imperfect duties of love in the sense of general love for mankind; these comprise the elements of beneficence, gratitude and sympathy. These virtues are directly opposed by the vices of envy, ingratitude and malice. It is a duty, he writes, to be beneficent, i.e. to be helpful to men in need according to one's means, for the sake of their happiness. The duty to help others in need requires no further justification than appeal to the categorical imperative under which the selfish maxim of refusing help would be contradictory to the desire to receive help when the need arose. It is interesting that he views beneficence as a requirement stemming from the injustice of government which systematically fails to guarantee adequate distribution of wealth.

Gratitude, which both Schumaker and Heyd posit as the natural and appropriate response towards acts of supererogation, is cast in quite another light by Kant, who sees the benefactor acting out of general love of mankind, mirrored and matched by the obligation of the recipient who is, in turn, enjoined by duty to express gratitude for the benefit conferred. Gratitude and philanthropy are two sides of the same coin. Benefits received are not in this case to be treated like favours which imply debts, but are to be accepted as the completion of a morally good deed.

Kant also explains that it is correct to show sympathy for others generally and to share feelings beyond mere dispositions to participate vicariously in positive aesthetic experiences of others. It is not, however, a duty to share the sufferings of others, for then two or more parties instead of merely one suffer. Such avoidable suffering he roundly condemns as soft-heartedness "Mitleidenschaft" or commiseration, which is to be distinguished from "Mitleid," or compassion. This distrust of soft-

heartedness may well lie at the heart of the question of trivial supererogatory acts. But Kant's conclusions about dealing with the personal hardships of others are even more remarkable, particularly for those such as Lehman who see in Kant's moral theory only legalism and absolute standards of unreasonable and therefore unattainable legal purity. In fact, Kant stresses the sociable aspect of man's make-up, advocating friendships and the approach to all moral issues with an ever-cheerful heart.³⁶ He realizes that the abstract call to duty in a formal sense may not always suffice as an incentive for moral action and in explaining that sympathetic feeling is generally a duty of humanity, but that it needs to be stimulated in the real world of moral experience.³⁷

Imperfect Duties of Collectivities

Kant's writings on ethics are predominantly oriented towards personal morality rather than the principles governing the ethical behaviour of collectivities, such as associations, institutions or nation states. His political studies, in contrast to his works on ethics, are somewhat sketchy, comprising at most no more than 5% of his total output. They are not systematic, were written late in his career and lie outside the principal works. Nonetheless, the main body of his ethical work is well adapted to a discussion of the responsibilities of collectivities.

³⁶*Metaphysics of Morals*, p. 256 and p. 273-4.

³⁷"It is therefore a duty not to avoid the places where the poor who lack the most basic necessities are to be found but rather to seek them out, and not to shun sick-rooms or debtor's prisons and so forth in order to avoid sharing painful feelings one may not be able to resist. For this is still one of the impulses that nature has implanted in us to do what the representation of duty alone would not accomplish." *ibid*, p. 251.

Kant believed that the affairs of men and nations were analogous in that the same types of moral concerns applied to both. Kant was an optimist by nature when dealing with speculation as to the future of mankind,³⁸ but also realized that the process could be interrupted from time to time, and that a major source of such interruptions lay in the relationships amongst governments.³⁹ The way out of such problems for Kant is a much strengthened version of international law which eventually expands to include all nations. In his endorsement of internationalism or “cosmopolitanism,” he states that the only possible remedy is international law based on public statutes backed by power, “statutes to which every state would have to submit in analogy to civil or constitutional law for individuals.”⁴⁰

Kant’s optimistic views have been effectively countered however, by the dominant realist view which denies that collectivities can answer to anything more than perfect duties, and that even these must be interpreted very narrowly indeed. This classical view is best typified by remarks attributed to Henry Temple (Lord) Palmerston who, speaking for His Majesty’s Government, stated that “we have no eternal allies, and we have no perpetual enemies. Our interests are eternal, and those it is our duty to follow.” Stanley Hoffman refers to Thucydides’ Melian dialogue as

³⁸Kant felt that the human species was “progressing steadily in civilization...and is also making strides for the better in regard to the moral end of its existence.” *On the Old Law*, p. 77, KGS VIII, 309.

³⁹“Nowhere does human nature appear less lovable than in the relations of whole nations to each other. No state’s independence or possessions are even for a moment safe from the others. The will to subjugate another or encroach upon what belongs to him is always present...” *ibid*, p. 80, KGS VIII, 312.

⁴⁰*ibid*. Kant’s views are as timely now as they ever were. Interestingly, US President Woodrow Wilson, in his address to Congress on April 3, 1917, explained that the world had arrived at an era in which “the same standards of conduct shall be observed among nations as among citizens of civilized states.”

instructive in this regard. “The Athenians tell the Melians that in international affairs, the strong do what they can and the weak do what they must, and that, anyhow, discussion of rights is valid only among equals. The Melians insist on talking about right and justice. The Athenians reply that ‘expediency goes with security while right and justice cannot be followed without danger,’ and they conquer and kill the Melians.”⁴¹

On this view, international relations is the domain of necessity in which the only ends are security and survival. Max Weber puts the distinction in another light, stressing the contrast between an ethic of conviction, or ultimate ends on one hand, and what he terms the ethics of responsibility, or the ethics of politics, on the other. The ethics of responsibility inevitably entails the subjugation of ends to means, sometimes evil means, in order to reach a given end. All politics entails conflict, and states are the ultimate expression of the values of their peoples for security and survival. There is, therefore, according to Weber, no value higher than that of the state. Furthermore, statesmen, as opposed to intellectuals, according to De Gaulle, are obliged by their responsibilities to take risks, including moral risks.⁴² Given such an analysis, it seems impossible to identify a place for basic ethical behaviour among nations. Hoffmann states that the “drama” of contemporary international politics is that there is, as of now, “no generally accepted alternative to Machiavellian statecraft,”⁴³ even though it is unsuitable as a true model for our times, as

⁴¹Hoffmann, p. 11.

⁴²“If statesmen {including Garibaldi} had behaved in their private life the way they did in order to bring about the unification of Italy - lying, spying, killing - their mothers would not have approved.” Hoffmann, p. 23.

⁴³ibid, p. 24.

it is based on the conception of an international condition of more or less continual conflict, if not actual warfare.

Confirmation of these views is provided by Arthur Schlesinger jr, a writer with an extensive background in public and international affairs, who claims that politics is a field of human activity where practical and prudential judgement must have priority over simple moral verdicts. "Saints can be pure," he states, "but statesmen must be responsible. As trustees for others, they must defend interests and compromise principles."⁴⁴

But interestingly enough, while there is no generally accepted code of behaviour amongst men, there are a number of conventions among nations⁴⁵ which do demand near universal respect by sovereign states.⁴⁶ Such documents both outlaw certain actions which the world order has placed beyond the limits of permissible national and international conduct and tentatively address the issue of rights for all men. Schlesinger does not deny that moral considerations are relevant to international relations, but he does contend, in acknowledging his debt here to Reinhold Niebuhr, that "the raw material of foreign affairs is, most of the time, morally neutral or ambiguous."⁴⁷ Moral principles have limited but direct use, however, he states, not only in cases of last resort, but also in providing input into the

⁴⁴Schlesinger, p. 22.

⁴⁵Particularly the Hague Conventions of 1899 and 1907, the Geneva Protocol of 1925, the Geneva Conventions of 1929, and the Charter and Covenant of the United Nations.

⁴⁶The Geneva Protocol outlawing the use of chemical weapons has been placed under some pressure in recent years, however.

⁴⁷Schlesinger, p. 26.

assessment of a nation's interests. One of the functions of personal ethics is "to clarify and civilize conceptions of the national interest."⁴⁸

Schlesinger, therefore, supports Niebuhr who held that private morality failed to influence the conduct of states.⁴⁹ Niebuhr also contends that it is illusory to believe that moral qualities of individuals can find replication in groups or society at large. The basic problem is that all cooperation on a larger scale than the most intimate social group requires a measure of coercion. While no state can maintain its unity purely by coercion, neither can it preserve itself without employing force.⁵⁰ The exercise of coercion, of course, is controlled by the dominant groups who impose their will on minorities. While individuals may be obliged to obey the law of love and sacrifice, nations are motivated by self-interest and selfishness. Paradoxically, the nature of patriotism is such that "it transmutes individual unselfishness into national egoism."⁵¹ Individual acts of heroism, therefore, performed on behalf of nation states have little moral value for Niebuhr because, while the highest ideal for individuals is unselfishness, the highest ideal of the state must be justice. To obtain justice, the state must "use such means as self-assertion, resistance, coercion

⁴⁸ibid, p. 35.

⁴⁹According to Niebuhr, individuals are endowed by nature with sympathy and consideration, a sense of justice, abilities to control egoism and to prefer the advantages of others to their own, whereas "in every human group there is less reason to guide and check impulse, less capacity to self-transcendence, less ability to comprehend the needs of others, and therefore more unrestrained egoism than the individuals who compose the group show in their private relationships. See Niebuhr, p. xi, xii.

⁵⁰See also Rawls, 1993, p. 136: "Political power is always coercive power backed by the government's use of sanctions for government alone has the authority to use force to uphold its law."

⁵¹ibid, p. 91.

and perhaps resentment, which cannot gain the moral sanction of the most sensitive human spirit.”⁵²

Although Niebuhr was writing before the end of the Second World War, before the Marshall Plan and before the great surge of aid for the third world really developed, his ‘realist’ views are well represented by contemporary scholars. Keith Spicer, for example, follows Niebuhr’s lead in his study of Canadian development assistance. Spicer finds that Canadian foreign aid was perceived from its outset as having moral value, as well as political and economic justification. The moral reason for helping developing nations is, he says, essentially conceived in humanitarian terms. Popular support for aid policies seems strongly dependent upon the humanitarian argument. ‘The Canadian people appear to support aid overwhelmingly, and largely for moral or idealistic reasons.’⁵³ Elected representatives responding to these expressions of general support are quick to advance the traditional values of Christian charity and philanthropy.

But Spicer points out that philanthropy is “a fickle and confused policy stimulant, derived exclusively from the personal conscience. Love for mankind is a virtue of the human heart, an emotion which can stir only individuals - never bureaucracies or institutions. Governments exist only to promote the public good; and as a result, they must act in the selfish interest of the state they serve.”⁵⁴ Spicer further contends that altruism in foreign policy is a misnomer, even if sometimes the fruits of policy are increasingly beneficial to foreigners. Spicer then rejects humanitarianism

⁵²ibid, p. 257.

⁵³Spicer, p. 5.

⁵⁴ibid, p. 11.

as an objective of [Canadian] policy, both despite the fact that individual voters tend to see humanitarianism as a legitimate goal of policy as well as a sufficient motivation to action, and notwithstanding the observation that politicians and ministers are prepared to justify foreign aid programs on this basis alone. Governments, he says, must make hard choices in the rational interests of their peoples, whereas "the satisfaction of charitable aims can be tasted only by human beings, for it is in their hearts that such feelings are born and only there that pity can find its catharsis."⁵⁵

The process by which such activities are transformed from ends in themselves for the attainment of specific political or economic ends seems to be the same one whereby the goodwill of a single human being is imperfectly matched by the goodwill of others. The institutionalization of these feelings, desires and motivations into concrete policy seems inevitably to entail a loss of vigour and a failure in direct transmission of the feelings or values originally perceived. Aid is, after all, primarily political when it is received by a given political entity. Since most foreign aid is channelled either to or through the governments of aid recipients, its delivery invariably becomes a factor of economic or social change and hence of political power. Foreign aid policies must therefore in the end, according to Spicer, be consonant with, and indeed circumscribed by, the limitations posed on the foreign policies of donor governments.

Spicer therefore not only fails to make a case for the "Samaritan," or supererogatory state, he also fails to make the case that collectivities admit of imperfect obligations which have binding force at all.

⁵⁵ibid.

As we have seen, the force of the dominant realist view presents major challenges to defenders of the thesis that moral agency for collectivities is a meaningful concept, let alone that collectivities are under perfect obligations in ways analogous to those experienced by individual autonomous moral agents. In order to draw the analogy between individuals and collectivities or nation-states clearly, proponents of consequentialist or Kantian views have no difficulty in showing that nation states can and do take actions considered offensive or reprehensible by impartial observers. Nor do they lack evidence in showing that such entities honour perfect obligations freely undertaken in the form of international agreements or treaties, for example. It is another matter, however, to demonstrate that collectivities including nation-states recognize and act on duties of imperfect obligation, let alone that they act supererogatorily. Several types of actions by states, however, do present themselves as possible candidates for such actions, of which the most likely are i) immigration policy, ii) development assistance, iii) international humanitarian intervention and peacekeeping, and iv) unilateral nuclear disarmament.⁵⁶ Each topic will be considered in turn, with a more detailed discussion reserved for the question of unilateral nuclear disarmament.

Immigration policies of governments on the whole are essentially geared to national interests. Typically, states set priorities, standards and guidelines and choose immigrants on the basis of the ability of newcomers

⁵⁶ Another candidate sometimes mentioned in the literature is trade policy. But trade issues generally, if not invariably, are decided strictly in accordance with perceived national interests, although variations are to be noted in the scope and duration of the calculation of such interests. Spicer notes, for example, that trade liberalization is a legitimate substitute for aid in certain circumstances. Such decisions are frequently agonizing for donor nations, especially if developing nations seek to gain market share in protected industries in donor nations.

to contribute to the economy and societies of such states. However, a subdivision of immigration policy, i.e. the acceptance of refugees, may well provide an illustration that states can and do act on perceptions and recognition of imperfect duties.

Curiously, the record shows that the most egregious acts of international good citizenship regarding immigration matters are to be found in third world nations.⁵⁷ The issue of refugees has attracted some interesting attention from philosophers in recent years. Shahnove has provided a useful definition of a refugee⁵⁸ and King has noted in a recent article that immigration from third world nations upsets social equality in receiving states by impacting most heavily upon the poorest classes in receiving states. He adds that a philosophical restatement of this issue generates extreme policy recommendations, i.e. either unlimited immigration based on principles relating to utilitarian concerns about non-discrimination or contractarian theories of social justice on one hand, or no immigration at all, based on the principles that the greater benefits could be realized both to immigrants by increasing foreign aid to third world nations and living standards of host nations. In such a discussion it would be wise not to lose sight completely of Kant's observation that the cosmopolitanism which alone can bring perpetual peace amongst nations requires duties of universal hospitality and that "no man has greater

⁵⁷Over five million Afghanistani refugees were absorbed by Iran and Pakistan after the Soviet invasion in 1978. Other extraordinary acts of apparent selflessness by authorities of third world nations have been the toppling of the Ugandan dictator Idi Amin by Tanzanian forces and the reception by Bangladesh, one of the world's poorest countries, of some 300,000 Arakanese Moslems expelled from Burma in 1991-1992.

⁵⁸This definition holds that refugees are those whose basic needs are unprotected by their country of origin, who have no other recourse than to seek international restitution of their needs, and who are so situated that international assistance is possible.

fundamental rights to enjoy a particular spot than any other.”⁵⁹ Rawls, for his part, recognizes that immigration is an “important question,” but chooses not to address it.⁶⁰ As a candidate for supererogatory action of collectivities, however, the acceptance of refugees has little appeal. Following our guidelines about supererogatory actions, it is clear that such actions are good, but less clear that they are done for the benefit of the refugees themselves, if only because many states recognize that refugees often “make the best immigrants.”

Given the difficulties with immigration policy as an area where collectivities may acknowledge and act on imperfect duties, let us look more carefully at the issue of development assistance. Clearly, advanced Western nations in the past twenty years have demonstrated a prima facie case for establishing the imperfect duties of collectivities, including nation states, in disinterested support for third world development.

For a coherent statement that collectivities, including institutions and nation states do have imperfect obligations, we turn to an explanation offered by Onora O’Neill who shows how a conception of ethical agency distinct from that of the individual ethical agent can be meaningfully formulated.⁶¹ She does so both by showing the inability of a utilitarian conception of agency to provide an adequate basis on which to incorporate the views of those most in need, and by demonstrating that only a (maverick)⁶² Kantian theory is equipped to do so.

⁵⁹See Kant *Perpetual Peace*, p. 446.

⁶⁰See Rawls, 1993, p. 136.

⁶¹ See O’Neill, 1986, p. 24.

⁶²*ibid*, p. 7.

O'Neill notes that Kant's theory of obligation, while abstract, is nonetheless aimed at universality in a practical sense. It is pre-eminently a theory of principles of action for beings of limited rationality. Human beings are clearly finitely rational, "but so are human institutions and collectivities."⁶³ Since Kantian obligations are supposed to guide the actions of agents with partial rather than idealized capacities to understand and act, they may equally serve as criteria for other entities with limited rationality deliberating about, and exercising moral agency, such as institutions and collectivities. Of course, duties of individuals are different from those of institutions or governments, but the principles regulating individual action and corporate conduct are none other than those of determinant or reflective judgement.⁶⁴

Now, perfect duties have priority over imperfect duties, just as justice is more fundamental a notion than beneficence. Therefore, the principal notions of freedom from coercion and deception which animate Kant's theory of justice are to be given practical priority over imperfect duties of beneficence, love and respect which emerge in the theory of virtue. These principles apply equally well to relations between individuals or relations of collectivities. While individuals and collectivities alike may possess limited understanding and powers to act, individuals can perform acts which collectivities cannot; on the other hand, collectivities typically have access to more accurate and complete information than individuals and can resist greater pressures to conform against their informed desires.

⁶³ibid, p. 132.

⁶⁴If the universal (the rule, principle or law) is given, then the judgement which subsumes the particular under it is *determinant*...If however, only the particular is given, and the universal has to be found for it, then the judgement is simply *reflective*. See *ibid*, p.125.

Ethical reasoning must be accessible to both, just as both individuals and institutions deliberate about their moral choices. In addition, ethical deliberation must be able to guide action, by employing accessible ethical categories and an accurate, non-idealized account of agency.

Utilitarian models do not serve, she claims, because they are either too abstract and inaccessible to all parties to moral transactions, or accessible but uncritical of prevailing practice. Because the utilitarian focus on results cannot distinguish between results obtained through barbarity and torture or those realized through hard work in the field, it is an unworthy guide to the solution of such problems as world hunger.⁶⁵ She also claims that the principles of utilitarian reasoning used by the aid agencies are inaccessible to the aid recipients⁶⁶ and that as a result, practical decisions are invariably decided by “the rules of the game,” i.e. on the basis of assumptions and practices related to the causal generalizations of social science and shared by the Western aid community.

O’Neill also dismisses rights-based arguments in favour of third world aid because such claims drive a wedge between perfect and imperfect duties. There is, in other words, little to be gained by pressing imperfect rights, since imperfect duties are not correlated with imperfect rights and donor agencies are under no obligation to honour such claims. “From the prospect of the claimant, which is central to theories of rights, imperfect duties offer little. Their performance can neither be claimed nor waived,

⁶⁵O’Neill concentrates on the issue of world hunger. For her purposes, the principal actors are governments of recipient and donor nations, institutions and agencies of all kinds, the individuals who provide aid and those who receive it.

⁶⁶ Experience of aid workers generally confirms that the language of “Government House” utilitarianism (See Chapter Two above) is as veiled to aid recipients today as it was to the colonized peoples of Sigwick’s day.

and is not required by justice but is a matter of charity or optional beneficence.”⁶⁷

This reinforces the concept of justice as assignable, claimable and enforceable. Furthermore, the accessibility of rights discourse has led to a proliferation of rights claims beyond the absorptive capacity of moral agency however construed. Language about rights is popular because it is highly accessible to those who believe themselves to hold certain rights, even when it is unclear who holds the correlative obligations. Even Bentham noted that a declaration of rights without a declaration of duties would be “but a lop-sided job.”⁶⁸

Although neither utilitarian nor rights-based approaches can provide the guides to moral action of collectivities, a neo-Kantian, or ‘maverick’ Kantian approach can serve well. Kant’s theory concentrated almost exclusively on the issue of autonomous moral agency and he has no theory of collective moral agency. But O’Neill contends that Kant’s theory is easily extendable for such a purpose and that it is fashioned to serve such ends with particular aptness because it can be easily accessible to all parties in the diverse aid relationships where the language of duty is the distinguishing feature of discourse, and is neither too thin nor too vague to guide moral action, nor structurally inclined to avoid criticism of the prevailing culture of decision-making. As such, it is particularly well suited to guiding action. It serves satisfactorily as a means of deciding forbidden and obligatory actions by working out in the contexts of

⁶⁷ibid, p. 102.

⁶⁸ibid, quoted on p. 120.

practical action which fundamental principles should guide collective actions, policies and procedures.⁶⁹

Perfect duties retain their primacy over imperfect ones in this system of collective agency, but this in no way weakens the structure of decision and delivery of actions essential to the requirements of those most in need. O'Neill stresses the binding nature of the imperatives of justice - the perfect duties to reduce threats of coercion and deception. Third world governments and their various operating institutions are often not informed about the effect of certain aid programs even when these are known to Western aid agencies, institutions or non-governmental organizations. This problem of 'Government House' utilitarianism, it will be recalled, was a particularly objectionable feature of Sidgwick's theory. But she adds that these governments and these peoples are also vulnerable to threats of disdain and disregard. O'Neill writes as if there are both perfect and imperfect obligations to avoid giving rise to these sentiments. While the perfect duties of justice are more fundamental than those of imperfect obligation, the latter are required as a supplement, but never as a substitute for justice. Kantian respect and beneficence are expressed in actions which aim to secure the full exercise of collective moral agency when it may be endangered through all manner of vicissitude. But in an unjust world, where needs perforce must go unmet, imperfect duties of individuals and imperfect obligations of collectivities may have to focus on meeting unmet needs. Beneficence cannot do the job of justice and it is no criticism of charitable agencies if they fail to alleviate poverty in conditions of great hardship and privation.

⁶⁹See *ibid* p. 132.

Another area of collective action of nation states in which imperfect duties is realized is the field of international humanitarian intervention, and the related activities of peacekeeping. International humanitarian intervention is a curious case, in that it demands that offenses be committed against the perfect rights of states. Typically, the sovereignty of nation A is breached by agents of another nation B, or groups of agents from various states united with nation B to protect vulnerable groups in nation A. United Nations action to protect the Kurds in Iraq after the Gulf War in 1991 is the most well known action of this type. Invariably, however, national interests are at stake in such cases and not least in this one, where the potential annihilation of the Iraqi Kurds by the Iraqi government would have been interpreted by much of the world community as a direct consequence of the war itself which was largely driven by strategic interests of oil-importing nations.

As noted above, however, the actions of international humanitarian activist groups,⁷⁰ in certain circumstances clearly satisfy requirements of imperfect obligation. Indeed, they may even be supererogatory. Typically, such actions are indeed morally good, in terms of their intention and execution, neither obligatory nor forbidden,⁷¹ done voluntarily for the sake of others and done usually at some risk. Such acts certainly engender gratitude and are praiseworthy. One government (France) has established a ministerial post responsible for international humanitarian affairs. But

⁷⁰Médecins sans frontières, Médecins du monde and the International Committee of the Red Cross are perhaps the most well known, but there are many more.

⁷¹Some actions may be forbidden by positive law in the country where actions take place, e.g. Iraq, Somalia or Haiti. But invariably such laws are unenforced, indeed unenforceable by local authorities who themselves are usually unjustly exercising power in the first place.

these and similar steps raise the issue of the progressive recognition of such responsibilities as perfect duties, i.e. in certain circumstances, such as an earthquake in a poor, developing nations, such countries are obliged to despatch rescue teams. Motivations of individual volunteers may not be supererogatory, however: moral agents may choose to perform such praiseworthy actions at the risk of their own lives for a variety of reasons.

Another possible area in which to identify imperfect duties of collectivities is the issue of international peacekeeping, particularly a subsection of these activities known as "peace-building." Such activities occur in theatres where civil or military conflicts are ongoing and are designed both to protect vulnerable groups and to stop fighting and therefore build peace. In the absence of national strategic interests, such activities satisfy the conditions of supererogatory actions as defined above. Indeed, they can be, and typically are, particularly risky. In dealing with terrorist extremists, it is sometimes the case that moral authority can only be established through force of arms. As the notion of risk is associated with the concept of the sublime, then it may be acceptable to speak of extremely risky acts of courage as more than simply good, that is, as sublime. Over 1300 lives have been lost in UN peacekeeping activities since 1948.⁷² The question of national interest is a key issue, however, and one which is often difficult to avoid, because the gratitude or admiration reflected on a nation which does support such actions heavily can be used as a sort of credit bank which will be drawn down on a subsequent opportunity. Some nations interpret casualties on international service as contributions to Tom Wolfe's New York favour bank, that is, as direct

⁷²This figure excludes casualties of the Korean War.

contributions to the advancement of their policies in other areas of greater national interest. It is, however, possible to imagine actions undertaken by the international community as a whole which do satisfy such criteria in a general way.

Interestingly, the question of despatching a force of military and civilian personnel to stabilize an area, or to build peace in theatres of conflict draws upon a broad range of reasons advanced by way of moral justification. Utilitarians note that such actions satisfy the greatest happiness of the greatest number and that all managerial aids to successful achievement of the mission at hand in terms of matériel, equipment, training and so forth are fully justified, if not actually enjoined. Proponents of virtue ethics would contend with ample justification that such efforts might be well and good, but would fail without displays of courage, bravery and heroism by members of such a force.⁷³ Deontologists could rightfully stress the duty-based nature of the action. Neo-Kantians would concur, particularly if the ethical reasoning behind the setting up of the intervention force was clearly understood by all sides to the conflict. A pluralistic explanation of this sort also responds to the need for clarity about moral and ethical objectives in a world where increasingly, military strategists are having to adjust their views about the identity of the enemy. All such views of the matter are valid as far as they go, but each is incomplete as a sole justification. This non-reductionist approach is more adequate to the moral facts of such cases than traditional

⁷³Col John Sanderson, commander of the UNTAC force in Cambodia - the most complex, if not the most dangerous UN operation in recent years - has explained to the author that in addition to the virtues of courage, all officers during the 18 month duration of UNTAC were required to show qualities of steadfastness, forbearance, and when all else failed, honour.

one-sided explanations. It is more flexible and more effective in accounting for the full range of moral experience.

Unilateral Nuclear Disarmament

Curtis, it will be recalled, distinguished supererogatory actions from required actions on one hand, and foolish actions on the other, by relating the degree of cost or risk involved in the commission of a given action to the moral value of the end of the action. If the cost or risk of such actions is considerably less significant than the value of the end, then the action is foolish or unwise. But, if the cost or risk is roughly as significant as the moral value of the end, then the agent has done something morally good, not morally required. Now, while imperfect duties are distinct from supererogatory actions in that they can be required, the latitude in their execution means that performance of a given act at a given time cannot be demanded. We could also say that in given particular circumstances, its intentional non-performance is neither wrong nor blameworthy. It is not wrong, using Ladd's example, to refrain from supporting this year's Red Feather campaign: it is wrong, however, following Mill and other utilitarians, not to support any charitable cause whatever, or at least, not to work in some way towards the alleviation of needless suffering. Unilateral nuclear disarmament, on this basis, might seem to constitute a supererogatory action by collectivities. This is partly because the use of nuclear weapons seems foolish or irrational, and partly because unilateral disarmament offers such an obvious solution to the growth of nuclear arsenals, particularly if undertaken by all nuclear weapons states. It would, following our characterizations of supererogatory actions be morally good, in terms of intention and execution: the intention to slow the nuclear arms

race, if not end it, is clearly good, and its execution removes many obvious dangers to human life. Such an action is clearly neither obligatory nor forbidden; it remains one political option among many. It is certainly done at risk or cost to the agent: unilateral relinquishment of a deterrent would, under most circumstances, increase vulnerability of the state initiating such action.

However, it is quite unlikely that such actions can be clearly established as being done for the sake of a good beyond national interest if only because the conditions under which such an act could be assessed as done primarily for the sake of a nuclear antagonist are inherently incalculable. Nor is the issue of self-interest easily avoided. Advocacy of such a policy by the British Labour Party in 1983 was designed to strengthen the party's appeal in an election campaign. Nor could it be said that such an action would engender gratitude;⁷⁴ nor would it be considered praiseworthy if it led to an unravelling of the strategic balance. However, such actions may be seen to be in the interests of all at some future date.

Perhaps a simplified criterion of supererogatory action would better serve such cases involving the common good of all human beings. Schumaker's original definition of supererogation, for example, could be modified for this purpose as follows:

supererogatory actions of collectivities = df. acts the performance of which by collectivities are (1) neither forbidden nor required by morality, (2) good, and (3) done primarily for the common good of all human beings and their future generations.

⁷⁴ This would not be welcomed by displaced workers, let alone amongst allies.

This formulation avoids some conditions of the criterion of supererogatory actions advanced in this thesis, but it seems to fail on the issue of the common or public good for all humans. It is no easy matter to decide whether it is better to run smaller risk of a greater disaster or a greater risk of a smaller disaster. Such questions cannot be resolved without independent assessment of the facts of strategic deployments and intentions. Philosophical inquiry is relevant to the process, but is not predominant in the resolution of the issues.⁷⁵

A more prudent approach to the issue of nuclear disarmament is thus required. It is also likely to obtain better results. A more prudent approach would recognize that nations have obligations to work towards disarmament, which serves to reduce risks of nuclear war while retaining the concept of deterrence. These might include unilateral steps that invite reciprocation, that involve all nuclear powers, that reward reasonableness in negotiating postures, a willingness to compromise on political differences, a “no first use declaration,” abrogation of launch on warning procedures and so forth.⁷⁶ To this list might be added the deferral and cancellation of tests, leading to signing and ratification of the Nuclear Test Ban Treaty, and other similar steps, such as the negotiation of regional nuclear-free zones, all of which reduce the likelihood of nuclear exchanges without the destabilizing effects of unilateral disarmament.

Prudential acts involving questions of political responsibility are pre-eminently imperfect duties. They oblige moral agents to take action on the

⁷⁵Bernard Williams noted that unilateral rejection of nuclear deterrence “cannot avoid arguments about what the world is really like”, including “the mind-blowing complexities” of strategic doctrine. See Baehr, p. 231.

⁷⁶See Kavka, 1983, p. 260.

basis of low-cost, versus high-cost risks, and to seek the good of others only secondarily to the goods of self-interest. This may mean that imperfect duties may sometimes offend the principle of wrongful intention, and the principle of double effect. The former holds that it is wrongful to intend, even conditionally, to do that which is would be morally wrong actually to do.⁷⁷ It is claimed that under this principle, it is morally wrong to use nuclear weapons in deterrence, since it is wrong to use them in attack. But it may not be wrong, or at least Pufendorf would not hold it to be wrong, to take an immoral action, such as threatening an adversary with obliteration, if only such an action will serve to deter a determined opponent bent on extreme malice. Furthermore, a distinction is easily made between wrongful intentions and wrongful threats. Nuclear deterrence involves threats but it may be argued that such threats do not imply any underlying formed intentions. Threats could be accompanied by conditional intentions to carry out the threat, or they could be bluffs, or indeed the threat might not be accompanied by any formed intention at all. Conditional intentions to do wrong are at least prima facie wrong, but they may not be wrong in themselves, i.e. they may be conditionally justifiable if they are overridden by a higher duty, i.e. the preservation of peace between the nuclear powers.⁷⁸ Hoffman, it will be recalled, noted that the unification of Italy would never have occurred if the major figures had not indulged in actions of which their mothers would have disapproved.

We noted that the issue of classification of unilateral nuclear disarmament as either a supererogatory act or an imperfect duty of states

⁷⁷See Lango, p. 316.

⁷⁸See Kemp, p. 289-90.

leads into consideration of the principle of double effect. Lackey, a proponent of unilateral nuclear disarmament, notes that the principle probably originated with Aquinas, but was subsequently modified and reached canonical form only in the mid-nineteenth century. The principle holds that in the course of doing good, it is sometimes necessary to bring evil into the world. It is permissible to bring evil into the world by action A provided:

- i) action A is not and must not be evil in itself;
- ii) action A must also have a good effect that outweighs the evil effect;
- iii) the good effect must be intended and the evil effect not intended, and;
- iv) the evil effect must not be the only means by which the good effect is achieved.

Lackey argues that the principle of double effect was brought into considerations relating to the immunity of non-combatants by the great powers in the 1920's and 1930's when it became evident that the traditional concepts of immunity of civil populations no longer applied in an era of aerial bombardments. The principle can be easily applied to justify killing of innocent bystanders in conflict situations.⁷⁹ But it is still an open question whether the principle of double effect can be rightfully used to justify nuclear deterrence, as opposed to situations of non-nuclear conflict. Nuclear deterrence can be defended, it would seem, on the basis of points

⁷⁹Lackey even contends that application of the principle allows Catholics to behave like utilitarians and claims that it has been adopted by official United States strategy papers in which the "unavoidable incidental casualties" or "collateral damage" which may occur during attacks on military objectives need to be addressed in a rational manner and, if possible, justified on rational grounds.

i), ii) and iv), but it cannot be easily accommodated in reference to point iii) if only because the evil effect, in this case the killing of innocents on a very large and indiscriminate basis, is an intended effect.⁸⁰ Lackey concludes that the doctrine is harmful in the context of strategic thinking and serves to obliterate the distinction between counter-value and counter-force targeting. The person who executes a strategic nuclear plan “is as responsible for collateral deaths as he is for the destruction of the primary targets.”⁸¹

Despite the problems for moral theory which the underlying concept of nuclear deterrence contains, particularly the “immoral intention” principle, the choices of seeking options other than maintaining deterrence are equally unpalatable; the only real options are actually to use nuclear weapons in the hope of prevailing against a massive counter-strike, or to disarm unilaterally. Nor has the dissolution of the Soviet Union had any effect upon these arguments. The existence of thousands of nuclear weapons in the successor states to the Soviet Union, the uncertainties surrounding their ownership and protection, the rise in numbers of the nuclear-capable group of nations and the hostility in bilateral relations between certain members of this group imply the continued reasonableness and usefulness of a credible nuclear deterrent by the principal liberal democracies.⁸²

⁸⁰Kemp contends that the concept of deterrence is essentially a matter of punishment and does not involve an intention to kill the innocent. “Conceptually, we cannot get further (with the idea of nuclear deterrence) than the intention to inflict some kind of damage” (Kemp, p. 279). But this line of reasoning is highly suspect, not to say counter-intuitive, given that the published strategies of France, and to a lesser extent those of the United Kingdom calls for counter-value targeting (i.e. attacking large population centres) as well as counter-force targeting (i.e. restricting targets to military objectives).

⁸¹Lackey, 1978, p. 267.

⁸²See Kennedy, pp.127 and 129.

Some philosophers, particularly Lackey, claim that voluntary non-possession of nuclear arms, of all available options relating to nuclear armaments, best serves the common good, and as the least unfair option, would be preferred by moral philosophers of any serious conviction. Lackey's advocacy of unilateral nuclear disarmament is weaker than his attack upon the theory of nuclear deterrence: he finds the former to be merely "not unfair" whereas he pronounces the latter to be "morally irresponsible." Lackey draws upon the Rawlsian veil of ignorance to bolster his idea that unilateral nuclear disarmament actually reduces the risks of conflict by projecting the idea of the authority of a 'world government' empowered to secure peace.⁸³ This is a key argument in defence of Lackey's thesis, but is vulnerable to criticism on two principal counts. The first point concerns the meaning of the term "non-possession." Lackey uses the term to include acquisition as well as voluntary renunciation and alienation, but in doing so has overlooked an important distinction. While all nuclear powers are in a position to opt for voluntary dispossession, they cannot opt for voluntary non-possession, because they already possess these weapons in unwanted abundance. "Voluntary non-possession" is essentially an option open only to nations such as Sweden or Canada which have the capability of producing nuclear weapons, but which voluntarily renounced the options of production and possession alike. Both

⁸³"If there were a world government that had the power to seize nuclear stockpiles of any nation, then it would be unfair to seize the stockpile of the United States without seizing {the stockpiles of all other nuclear states}. It does not follow that it would be unfair for the United States to give up its nuclear weapons voluntarily. It would be unfair for the government to impound \$150 from my bank account in order to support famine relief: it does not follow that it would be unfair for me to take \$150 from my bank account and send it off to famine relief. Voluntary non-possession is not unfair." Lackey, 1976, p. 179-80.

voluntary non-possession and voluntary dispossession, (renunciation and destruction) would appear to be prima facie instances of supererogatory actions, but, as shown elsewhere, the classification of such political acts as supererogatory involves numerous difficulties.

Secondly, it must be asked whether the voluntary renunciation and destruction of weapons by one large nuclear nation is equally fair to all parties concerned. It seems obvious that the exercise of such an option in the absence of any reciprocal assurance from the other major nuclear weapons states would ipso facto confer a major advantage on these remaining nuclear weapons states, on the assumption that they remained fully armed. In such a case, it is "less fair" to the citizens of the state which is voluntarily renouncing these weapons who would then stand at the military mercy of their opponents, not to mention allies and other lesser powers that would find themselves in greater danger of intimidation from those nations which retained the use of such weapons.

Despite these considerations which seem to rule out any possibility of supererogatory actions by nation states, a number of uncertainties remain. Intuitively, one feels that the action by one nation, in coming to the aid of another under attack or threat of attack from a nation which in no manner threatens the first nation is at least partially supererogatory, especially when the cost of casualties is taken into account. The actions of Australia at Gallipoli might be proposed in this connection, or the act of the United States in coming to the aid of free Europe in both world wars, or of reestablishing prosperity in lands conquered by the allies during World War II through the Marshall Plan. But are not such actions either in the very nature of military alliances themselves, or directly in the interests of the donor nations, in the case of the Marshall Plan, and have such

considerations not explained the desire of the United States, Australia and Canada to be willing to fight consecutive wars in Europe or the Pacific in the belief that in so doing, the likelihood of having to do so in their own homelands is thereby reduced? Perhaps the actions of the Nordic nations, and some others, in support of international peacekeeping actions could be advanced in this connection. In one way or another, however, such purported instances of political supererogation seem less likely to satisfy any criterion of supererogatory action, especially in terms of the condition that the action be done voluntarily for the sake of the good of other parties.

In a world of increasing interdependence, where the good of all nations is more and more linked together, and in which issues affecting the common heritage of mankind and the welfare of future generations become principal factors in the affairs of nations, it may well be that acts of uncontested supererogatory value are even less likely to present themselves. But then, they rarely have been obvious. Of course, friendships amongst peoples and nations are real and have motivating force: nations do behave towards each other as friends do, and often enough do take risks on each other's behalf. Perhaps it is enough to say that when nations do so for the common good, including their own, they are honouring important imperfect duties, and even though the actions may not be supererogatory, they are still worthy of praise, and this, for many reasons.

CHAPTER FIVE

THE STRUCTURE OF MORAL ACTION

This chapter shows how types of moral disagreements illustrate certain features relating to the classification of moral action. Throughout, the chapter defends the model of moral action divided into the categories of prohibited acts, offenses, perfect duties, imperfect duties and supererogatory acts. The important relationship between imperfect duties and supererogatory acts is examined in detail. The chapter also provides a critical assessment of the various claims of deontic logic, particularly those advanced by Chisholm. The views of Mellema and Trianosky concerning the significance of aretaic judgements are examined, together with a classification of moral actions which includes both deontic and aretaic categories.

Moral Disagreements

Moral conflicts form part of the human condition. Disagreement also constitutes a principal characteristic of philosophical approaches to morality.¹ Its abundant presence in strategic places occludes what measure of consensus, or at least conventional practice might otherwise be distinguished, given that all morality concerns social relationships on which a fair measure of trans-cultural agreement does exist. People do act from a

¹"The most striking feature of contemporary moral utterance is that so much of it is used to express disagreements; and the most striking feature of the debates in which these disagreements are expressed is their interminable character." MacIntyre, 1984, p. 6.

sense of justice, from friendship, loyalty, compassion, gratitude, generosity, family affection and the like, qualities that are recognized and honoured in most societies.² All manner of moral codes have been devised to encourage such conduct. But philosophical disagreements about moral actions typically concern not so much the relative presence or absence of guides to action, as the manner in which such actions, together with their motivating forces are perceived as parts of a whole, and how criteria can be developed and applied to these actions and forces in order to determine their value in terms of justice, rightness or goodness. These disagreements can be divided into four basic types:

(1) We may disagree over what should never be done at all, or what might possibly be done under certain conditions, but which is still not good at all.

By this we can easily see how a given action may be condemned by some people but which are found by others to be merely unpleasant or offensive. Some actions may be considered permissible, but still unpleasant or unworthy of emulation or imitation. Examples might include types of family violence or the treatment of women which were commonly accepted only a few years ago but which are now considered not simply offensive, but positively forbidden in western societies.

(2) We might quarrel over what it is legitimately proper to do, and what we should not do even if it is not very good, but presumably could get away with, under certain circumstances.

Disagreements of this sort also turn on what is considered permissible conduct or behaviour, but in direct reference to a recognized

²See Midgely, p. 5.

code of conduct. Examples could be found amongst actions which would be considered legally correct by one group but morally reprehensible by another, such as controversies surrounding business ethics,³ environmental regulations, or the legitimacy of various uses of property.

(3) We might disagree over what we are normally required to do in one way or another, and what might reasonably be expected of us in addition.

Most decisions in business or professional life concern the fulfillment of basic requirements, and to some extent surpassing them. An example here might be the concerns felt by some nations to expand the application of humanitarian intervention, and the desire of many other nations to oppose any such enterprise which would restrict national sovereignty. Alternatively, disagreement may surface over issues relating to the support of charitable institutions.

(4) We may quarrel over what we may find expected of us (or not expected) in relation to that which it would be exceptionally good to do, but which we do not have to do at all, for various reasons including high costs or risks.

We may find it particularly admirable for someone to accept suddenly increased responsibilities for a charitable organization without in any way seeing the application of such responsibilities to ourselves, and resent criticism directed at us for not having accepted to do such things which in no way are our responsibility. Nonetheless, it is curious how criticism still does attach to moral agents whose actions fail to meet

³Cicero, in contrasting what is right with what is advantageous, condemns sharp practice such as price gouging and deception in real estate dealings, but acknowledges that "doubtful cases" and conflicts are frequent. See *On Duties* III VI.

exceptionally high standards, even though no recognized obligation to perform them exists.

Basic to these disagreements is the apprehension that they coincide with the areas of overlap and interchange between what we could in non-technical language be termed as awful, offensive, correct, responsible or self-sacrificial actions. Multiple examples of these 'borderground' skirmishes are readily available from everyday experience. Serious abuses of vulnerable people are awful; they may also be diabolical and universally reprehensible on moral grounds. Impoliteness is usually always considered offensive. Paying debts is most usually always correct. Giving to charities under most normal circumstances is considered responsible. Dedicating one's life to the service of lepers is typically self-sacrificial, and typically gives rise to either gratitude (from the lepers) or admiration (from lepers and non-lepers alike). The disagreements listed under (1) are to found in the area where the simply awful or forbidden encounters the merely offensive. The quarrels of example (2) are to be located in the area where offences are challenged by legality or the correctnesses of perfect duty. Example (3) concerns disagreements to be found when the merely correct meets the primarily responsible, i.e. where perfect duties collide with imperfect ones. Finally, the example found in (4) coincides with the zone of uncertainty marking the "borderground" between the fully responsible and the self-sacrificial, the area where imperfect duties merge with acts of supererogation.

These four types of moral disagreements illustrate important clues as to the structure of moral action. They indicate that legitimate disagreement is quite possible. Some disagreements about property rights for example may have to be resolved by the courts. They typically concern whether a

particular right (usually a perfect right) is matched by a particular corresponding duty. These kinds of disagreements also indicate that it is often difficult to categorize certain moral actions as being of one type or another. They also suggest that a definite pattern or structure of responsibility seems to underlie morality as a whole.

Now the system outlined above shares many common features with what Gregory Mellema proposed as the “standard system” of classifying all human acts as either obligatory, supererogatory, neutral, offensive or forbidden.⁴ This classification seems intuitively satisfactory. Interestingly, the “standard system” coincides virtually identically with the five categories of commands and prohibitions recognized in Islamic law. These are i) the obligatory acts, ii) recommended acts not considered obligatory such as supererogatory acts of kindness, iii) permitted actions, regarding which the law adopts a neutral stance, iv) acts that are discouraged and regarded as reprehensible, but not strictly forbidden, and v) actions which are categorically forbidden.⁵ This remarkable coincidence confirms the intuition behind the standard account that a relatively simple classification of moral actions is both possible and determinable, and that its easy transportability in philosophical terms conditions its more general acceptability as a trans-cultural standard of assessment.

This thesis concludes that a variation on the standard account of human action as outlined by Mellema is a promising candidate for such widespread approval. It supports the contention that moral actions may be considered as either prohibited, offensive, perfect or imperfect duties, or

⁴See Mellema, 1992, p. 127

⁵See Nanji, p. 113.

supererogatory acts. It takes the point of view that the morally neutral is either neutral in the strictest sense, as whether one ties up one's left shoe before the right, in which case it is morally irrelevant, or that it is morally relevant, in which case it is then considered as falling in one of the five principal divisions outlined above, or indeed in one of the four zones of interface. In the latter eventuality, only reflection and discourse, dialogue and argument can resolve the issue of classification.

In addition to this “duty-based” way of approaching moral action, we will also recognize a measure of “virtue-based” judgements in assessing moral actions and will use the concepts of blameworthiness and praiseworthiness to this end. Generally speaking, actions judged as awful or offensive are blameworthy and actions judged responsible and self-sacrificial are praiseworthy. It is not tautologous to term awful or offensive actions as blameworthy, or to call all responsible or self-sacrificial actions praiseworthy. An assumption of moral responsibility is made in order to draw any judgements about moral actions. But vicious or diabolical actions are not uniformly blameworthy. Some will be more blameworthy than others. It is vicious to butcher a busload of innocent civilians, but it is even more blameworthy to butcher a church filled with them. Similarly with praiseworthy actions, some will be more praiseworthy than others, and for reasons which the proposed model of classification of moral action renders intelligible and justifiable. Correct actions may be either praiseworthy or blameworthy. Degrees of both praiseworthiness and blameworthiness in the other categories are also recognized so as to allow for moral judgements that some actions are more praiseworthy than others, and so forth.

The key concepts for this analysis of moral action are those of supererogation and imperfect duty. Supererogation is a comparative newcomer to the philosophical agenda, and, as noted above, a complex literature has built up around it since the publication of Urmson's article in 1958. Many complexities still surround the concept. As mentioned above, the use of the verb 'supererogare' in the Vulgate version of St. Luke's text refers to actions which the innkeeper is asked to perform in return for payments which the good Samaritan promises on his return. It is not a simple moral transaction between the Good Samaritan and the robbers' victim; rather, it is a complicated arrangement of a three-way trust, involving relations between the Good Samaritan and both the victim and the innkeeper, in addition to separate relations between the innkeeper and the wounded traveller. Furthermore, none of these relationships are solely direct; they all involve matters of indirect responsibility, or trust.⁶ The Good Samaritan's actions were those which a Pharisee could never have

⁶The innkeeper has a direct relationship with the Good Samaritan to spend the money left with him for the victim: the innkeeper has an indirect relationship of trust with the Good Samaritan that his extra costs will be repaid when the Good Samaritan returns.

The innkeeper has a direct responsibility to nurse the victim for as long as the Good Samaritan's money holds up, and will also be held accountable for additional care as a matter of trust.

The victim has a direct relationship with the Good Samaritan who rescued him in the first instance, and an indirect relationship of trust of the same nature as the innkeeper has with the Good Samaritan.

The victim has a direct relationship with the innkeeper as long as the Good Samaritan's money does not run out. After that, he needs to trust the innkeeper for his care.

The Good Samaritan has a direct relationship to the victim whom he rescued in the first instance. He also assumes an indirect relationship by financing the first stages of the victim's recovery. He assumes an additional measure of responsibility by promising to pay all other costs.

The Good Samaritan has a direct relationship with the innkeeper whom he pays for services rendered up to a point. He also has an indirect relationship of trust in assuming that the innkeeper will in fact finance the victim's complete recovery, even if he has to spend money not left to him by the Good Samaritan.

performed. Perhaps those who never perform supererogatory actions are modern day Pharisees.⁷ The doctrine of supererogation, which requires separation of those things which must be done in one way or another, i.e. perfect and imperfect duties, from those things that would be good to do but which are certainly not duties in any way, i.e. supererogatory acts, has obvious popular appeal. It clearly identifies an important area of moral action as essentially non-required, and optional, thus permitting moral agents to pursue such types of actions, often involving personal perfections or even indulgences. One writer has termed the doctrine “yuppie ethics” for this reason noting that a concern for supererogatory actions might lead people to substitute them for dutiful ones.⁸ The present work will attempt to demonstrate the significance of the doctrine in relation to other categories by situating it on a spectrum of moral action.

The concept of imperfect duty is more problematic than that of supererogatory action in that it has attracted less attention from philosophers in the recent past than during the early modern period, particularly the seventeenth and eighteenth centuries. The important distinction is that while imperfect duties are matched for the most part by imperfect rights, in much the same way as perfect duties are tracked by perfect rights, one cannot be obliged to perform an imperfect duty in the same way one can legitimately be forced to honour perfect duties.

⁷See Mellema, 1992, p. 200 ff.

⁸ Marcia Bacon argues that this doctrine leads to distortions in moral life, as in “offering some surplus cheese to the poor, rather than to work to alter the conditions that make poverty and inequality social conditions,” (p. 247). See also “I have done ‘my duty’ ...now my time, my choices are all mine....Any other attention to morality is, for me, strictly optional.” Bacon, p. 249.

Responsibility and Self-sacrifice

The alternative classification proposed in this thesis is based on five types of moral actions: these are prohibited acts, offenses, perfect duties, imperfect duties and acts of supererogation. The thesis has dealt in some detail with the principles underlying such distinctions, and in particular with the nature of perfect duties, imperfect duties and supererogatory acts. The distinction between perfect and imperfect duties has been amply explained; it now remains to review the relationship between imperfect duties and acts of supererogation.

The major distinction between these two types of moral action is that between duty and non-duty. Imperfect duties remain obligatory, however wide their field of application may be. They are not optional. Supererogatory acts are matters of choice. They are optional matters of discretion, but require a positive decision-making process, aiming for maximum intentional moral performance, rather than a process which produces 'least worse' results. Supererogatory actions should therefore be easily distinguishable from imperfect duties. In fact, they are not.

The relationship of imperfect duties to supererogatory acts is more problematic than the relationship between perfect and imperfect duties. This is because the areas of overlap are greater and the criteria for discriminating between one type of action and the other are mere approximations which must in all cases of doubt, be qualified by a generosity of spirit not readily calculable in quantitative terms.

In a recent sensitive discussion of the issue, Schumaker contends that imperfect duties constitute the elaboration of norms of generalized reciprocity, whose cultivation "is fundamental to the good order of any

society whatever.”⁹ Imperfect duties are actions which should be distinguished from those of a ‘thin’ or strict theory of justice, which only covers matters involving assignable or enforceable claims. They are, nonetheless, aspects of justice as comprising both a narrow sense (J1), as limited to perfect rights and duties determined through promises, contracts and treaties as interpreted through the courts if necessary, and a wide sense (J2) encompassing notions of kindness, peace and love (following Pufendorf) or respect, love and beneficence (following Kant.)

“Natural justice” may not be an inept characterization of J1 and J2, even though it is well distant from the concept of Grotius, who insisted that justice is a matter of perfect rights and duties only. Such an explanation sheds light on a number of disputes concerning various interpretations of legal entitlement. It assists, for example, in deciphering the unequal treaties between colonial authorities and aboriginal nations in Canada whereby the search for just settlements was clouded at various stages by the preoccupation of the authorities to give effect to J1, and the concerns of the first nation groups with the broad sense of justice, including J2.

But many of the conventions of J2 are loose, indistinctly understood, poorly articulated or unspecific (or even unspecifiable) in comparison to the rules and procedures of J1. A broad theory whereby more is offered and less is claimed is the only one which can accommodate the interests of all parties to a dispute justly. Kant believes that a good will and respect for the moral law will suffice. Other moral teachers have stressed in various ways that generosity is required of moral actors exercising moral authority. We noted in Chapter Four above how Stith argues that some

⁹Schumaker, 1992, p.7.

rights can and should be rejected in favour of what he calls ‘duties of generosity.’ Such duties, he adds, are nearly unheard of in legal and moral systems, but they abound in manners and religion.¹⁰ This natural duty he claims to have unearthed is appropriately called one of “generosity” because it involves an obligation to relinquish potential possession to someone who has no right to possession. While normative systems of rights require exactitude, he says that natural duties of generosity involve “buffer zones extending back a bit” from the boundaries to which rights would press. “Each had a duty not to use the buffer strip and also not to object to the use of the strip by the neighbour.”¹¹ The result is that litigation is lessened because the notion of what constitutes trespass has been intentionally diminished so that trespass no longer triggers conflict at the same levels or intensity.

The norms of reciprocity are, according to Schumaker, subject to the establishment of a balance between giving and receiving in only a general way, and over a longer period of time. The type of moral action comprised by generalized reciprocity is caring, but uncalculating as to benefits or disadvantage. In this it differs from the practice of balanced reciprocity because “the completion of each reciprocation exhausts the indebtedness of the parties and leaves them free of continuing commitment.”¹² The legalized accounts of balanced reciprocity are

¹⁰George Steiner explains that the concept of *cortesia* applies to all speech, discourse and literature. His interpretation of this concept is extraordinarily rich in connotation. He says that the issue is that of “civility...towards the inward savour of things,” that it is a “courtesy of heart, a tact of sensibility and intellection” and that “classically, where branch and leaf are highest, *cortesia* qualifies that last ambush or final tryst which is the possible venue - the coming, the coming to a place - of God.” See Steiner, p. 148.

¹¹Stith, p. 210.

¹²Schumaker, 1992, p. 30.

complemented and improved upon by unwritten covenants of generalized reciprocity which are based not upon expectations of satisfaction but upon obligations generated by relationships. They arise out of what one has freely received in the past and they therefore have “a gratuitous growing edge which continually creates new covenants.”¹³ This is, in other words, an account of a virtuous circle.

But imperfect duties cannot be specified with accuracy, let alone exactitude.¹⁴ Their distinguishing feature of latitude, their inability to lend themselves to quantification and their ‘penumbral’ nature, as Schumaker terms it, constitute the difference, as Pufendorf explained it, between ‘esse’ and ‘bene esse’; but they are, as Stith has recognized, “the very stuff of social cohesion.”¹⁵ The boundary between imperfect duty and acts of supererogation is therefore imprecise, comprising, according to various authors, innumerable imperfect duties of superabundant virtue and trivial acts of supererogation. This difficulty in discerning clear boundaries is partly because many imperfect duties share similar features and characteristics of supererogatory actions: they may be good, they may inspire gratitude, they may manifest excellence or virtue in some important respect, they may involve risks or high costs, and in the demonstrations of benevolence surpass the confines of strict justice.

¹³ibid.

¹⁴Nigel Power argues that if we have “a proper appreciation of the facts of world poverty, of our global moral identities, of the moral seriousness of responding to extreme suffering, of what quality of life consists in, and of the duty of caring as much as we can consistent with our quality of life, then we will care as much as we ought.” Power, p. 282. He also notes that an argument to make significant obligations to help alleviate world poverty is not a relentless, overbearing one. “But you may ask: ‘How much is significant?’ My answer will seem like no answer: there is no percentage of wealth or amount of time to be pulled out of a magic moral box. Caring is an unquantifiable dimension to moral responsibility.” *ibid.*

¹⁵Stith, p. 210.

Schumaker isolates these problems of demarcation when he asks how thoughtful one must be in order to perform an act of supererogation.¹⁶ The nature of imperfect duty, and the features and characteristics of supererogatory acts is such that “there is a sort of no-man’s land between the realms of {imperfect} duty and supererogation: there are acts lying in this obscure space of which we cannot insist that they are duties or that they are supererogatory.”¹⁷ This distinction was well-known to the modern natural law theorists, who allowed for a moment of hesitation in determining when day became night, hot water became cold or vice versa. If moral luck means that one is a more general beneficiary of supererogatory actions of others than an initiator of them, then ‘moral safety’ means standing less on right and more on ‘duties of generosity’ when faced with appropriate choices. If Aristotle is correct that over-accuracy in ethics is a mark of meanness, and if Mary Gregor is right that the practice of virtue also excludes not only vice, but also a practice of brinkmanship with regard to vice, then Sidgwick is also right in claiming that a measure of generosity beyond what is strictly required is desired of moral agents. When they are freely given, some acts may be imperfect duties, some may be acts of supererogation. If, however, it can be assessed fairly and genuinely that such acts are morally good in terms of their intention and execution, neither obligatory nor forbidden, done voluntarily for the sake of good beyond oneself and done at risk or cost to the moral agent, then they are supererogatory. Such actions will engender gratitude or admiration; they are praiseworthy in being meritorious, restorative of

¹⁶Schumaker, 1992, p. 68.

¹⁷ibid, p. 68-69.

relationships, exceptional in some manner, and related to character formation.

While on occasion it may be difficult to make such a determination, it is appropriate to note that “just as no one can be required to perform supererogatory acts, neither can one habitually fulfill one’s complete duty without at the same time sometimes going beyond it.”¹⁸

Deontic Analysis

This thesis has demonstrated that a reasonable account of the structure of moral action will need to include supererogatory actions, as well as perfect and imperfect duties. By ‘reasonable’ is meant a system which is not counter-intuitive. It should not, for instance, include all praiseworthy acts as duties without any distinction. It should, in other words, be able to take account of all relevant facts about moral actions in the real world. The long argument in support of supererogation in this thesis is grounded in the facts of moral experience. Urmson was careful to present his observations about supererogatory paradigms as facts; similarly, Schumaker relied upon normally occurring moral actions to ground his definition of supererogation.

An acceptable account of the structure of moral action must also be adequate to account for the major objections to it and to be found at least not inconsistent with the major foundations of contemporary ethical theory. In assessing the suitability of various approaches to the issue, their various advantages and shortcomings will be set out in relation to these requirements. It is also important that a system of classification be

¹⁸ibid, p. 68.

formulable in terms of reasonable simplicity. The five-part distinction developed in this thesis adequately satisfies these requirements.

In some important ways, common sense beliefs intersect with philosophical analysis of the question. We have noted the widespread support given to the 'standard system' of a five-part division as proposed principally by Mellema, and we have also noted how this accords roughly at least with the structure of moral action recognized by Islam. It is useful to consider this view of the issue as representing a common sense consensus about the issue. We contend, however, that however comfortable the standard system may appear, and how much it may accord with common sense, there are some important adjustments that need to be made to a theoretical presentation of the issue in philosophical terms. Some of these adjustments emerge from an evaluation of deontic analysis.

Roderick Chisholm addressed himself to the logical consequences of the existence of supererogatory acts on three separate occasions.¹⁹ This series of articles is important because it deals in a systematic manner with the parallelism between offenses and supererogation for the first time in contemporary literature. In his first article, Chisholm constructs a list of nine possible types of moral actions based on the concepts of good, bad, neutral, omission and commission as follows:

	<u>Performance</u>	<u>Non-Performance</u>	<u>Type of Action</u>
1	bad	bad	totally offensive
2	bad	neutral	offense of commission

¹⁹"Supererogation and Offense: a Conceptual Scheme for Ethics" *Ratio* 5, 1963.; "The Ethics of Requirement" *APQ* 1, 1964. and "Intrinsic Preferability and the Problem of Supererogation", with Ernest Sosa, *Synthese*, 16, 1966.

3	bad	good	forbidden
4	neutral	good	offense of omission
5	neutral	neutral	totally indifferent
6	neutral	good	supererogatory omission
7	good	bad	obligatory
8	good	neutral	supererogatory commission
9	good	good	totally supererogatory

Under this scheme, the supererogatory is good but not obligatory to do and the offensive is that which is bad but not forbidden.²⁰ Building upon the work of Urmson and other supererogationists such as Ladd²¹ and Feinberg, Chisholm offers a classification which has had considerable influence in the literature. Chisholm accepts as fact that the tripartite classification is inadequate to the facts of acts which are at once permitted, non-obligatory and yet not morally indifferent. He admits that in defining supererogatory actions in terms of logical possibilities, he has distanced himself from the 'etymological' meaning of "above and beyond duty."²² But he finds that if we consider supererogation to be "non-obligatory well-doing," we cannot identify it solely with acts of saintliness and heroism.

²⁰Chisholm, 1963, p. 14.

²¹Ladd questioned the tripartite classification of moral actions by speculating that there were acts, such as donating to the Red Feather campaign which were "acts which it is right to do, but not wrong not to do." Ladd, p. 127.

²²Chisholm, 1964, p. 3.

Although such acts are supererogatory, so must be other types of acts under this definition. Chisholm's logical description of supererogatory acts would seem then to deny any possibility of recapturing the 'etymological' meaning of supererogation, on the basis, for example, that they are praiseworthy, or in some way admirable, such as being meritorious. The clearest statement of what Chisholm means by supererogatory acts is as follows: "there are acts, sometimes called acts of supererogation, which include, but are not restricted to, the great deeds of saints and heroes, and which are such that we can say of them: 'you ought to perform them but you don't have to.' These include little acts of kindness and small favours which, like the more significant deeds, go beyond the call of duty."²³ Elsewhere, he states that supererogation "encompasses those small favours and acts of courtesy that ordinary men go out of their way to perform."²⁴ This formulation ensures that the category of supererogatory acts includes trivial acts. It is unhelpful, however, because although Chisholm notes that "ordinary men go out of their way to perform them," it is important to retain an element of risk or cost as a feature of supererogatory action.

Chisholm completed his examination of the notion of moral offence by arguing in a similar manner that offenses as "permissive ill-doings" are not to be identified with villainous or diabolical acts. But just as supererogatory acts may be trifling or heroic, Chisholm maintains that offensive acts may similarly be trifling or diabolical. Now, the notion of a diabolical act which is still permissible rather than simply prohibited is a defective one. Chisholm posits the example of the "informer" as an

²³ibid, p. 152.

²⁴Chisholm, 1966, p. 326.

example of this type. Heyd, however, dismisses this out of hand as without foundation and as an attempt to preserve a perceived but spurious symmetry by claiming to show the existence of a logically possible but nonetheless non-existent category of moral acts. The actions of an informer are clearly morally wrong and there is no reason to suggest that they can escape the moral law as Chisholm suggests.

It would appear that Chisholm has included the distinction for the sake of providing some elements of systematized symmetry to his account. Because he holds that supererogatory acts may be trifling or heroic, diabolical acts may, correspondingly, be either permissible or offensive. The concept of a diabolical act which is still permissible rather than simply totally offensive and therefore prohibited is a curious one, and it may well form a class with no members. Chisholm's classification would be much improved by relinquishing the notions of trivial supererogatory actions as well as permissible diabolical actions.

Another obvious difficulty with this scheme concerns the question of 'performance' and 'non-performance'; given the lack of reference to any intention to perform such acts. Although Chisholm corrects this interpretation of moral performance in subsequent papers, the distinction cannot account for a great body of moral actions whose performances are intentionally good, but unsuccessful. Failed rescue attempts, for example, may be admirable and praiseworthy, or even meritorious: high risks are run, and lives lost. In cases where the 'performance,' i.e. the rescue, did not occur, moral values may yet have been displayed in abundance.²⁵

²⁵Interestingly, the highest military award for bravery in the Commonwealth, the Victoria Cross, is reserved for valorous actions which were successful in terms of turning the course of a particular action on the field of battle, whether or not its recipient actually

Chisholm's schema also presents difficulties in distinguishing between acts of imperfect obligation and supererogatory acts. We are given three types of supererogatory acts, but only one type of duty. Acts whose performance is good and whose non-performance is neutral could easily apply to a whole range of imperfect duties. Furthermore, it is not clear how an act whose performance and whose non-performance can both be neutral and "moral" at the same time. Finally, we note that the most telling criticism of the method of deontic analysis practised at least by Chisholm and Sosa is that it seeks an excessive simplification of what Urmson acknowledged to be a "complicated" matter. It is only very approximate indeed to refer to actions whose performance and non-performance is good as totally supererogatory. As outlined in Chapter One, the entire concept of supererogation requires assessments of intention, both in terms of performance, and in terms of intended good performance, as well as in terms of the intended good of others; it requires some risk assessment and an examination of a number of secondary characteristics including admiration, gratitude, excellence, and meritoriousness.

Chisholm attempted in subsequent papers to correct some of these faults but retained the idea that both supererogation and offenses can be accommodated within a classification of moral actions which recognizes both of them as optional but not morally indifferent categories. He concluded his research with the notion that the problem of supererogation can be solved using the notion of "intrinsic preferability." Chisholm (and Sosa) contend that if supererogatory actions exist, a matter which they

survived. Other medals recognize valorous actions which did not succeed in the same sense.

otherwise do not discuss, then the classical tripartite classification of moral actions must be revised to include five categories, namely; the obligatory, whose performance is morally good and non-performance morally bad; the forbidden, whose performance is morally bad and non-performance morally good; the indifferent, such that its performance and non-performance are neither morally good nor bad; the supererogatory, whose performance is morally good and whose non-performance is morally bad and the offensive, whose performance is morally bad and whose non-performance is not morally good. At this point, Chisholm and Sosa introduce the logic of “intrinsic preferability” which they claim to be an exhaustive and exclusive schema for all value possibilities of any state of affairs as follows:

1. Gp and B-p where a given state of affairs - “p” is
 either “G” (good), “B” (bad), or “N” (neutral). Hence;
2. Gp and N-p
3. Np and B-p
4. Np and N-p
5. Np and G-p
6. Bp and N-p
7. Bp and G-p

Chisholm’s account is developed to the point where he claims that his schema can situate all moral actions within it and therefore account satisfactorily for all manner of moral acts in terms of the deontic categories he chooses to identify. Substituting the seven values of this original calculus with moral values yields seven deontic categories as follows:

1. $G(Mp)$ and $B(-Mp)$ i.e. p is such that its intentional performance is morally good and its intentional non-performance is morally bad, that is, that it is obligatory;

2. $G(Mp)$ and $N(-Mp)$ i.e. p is such that its intentional performance is good and its intentional non-performance morally neutral, that is supererogatory in a positive sense;

3. $N(Mp)$ and $B(-Mp)$ i.e. p is such that its intentional performance is morally neutral and its intentional non-performance is morally bad, that is, offensive;

4. $N(Mp)$ and $N(-Mp)$ i.e. p is such that its intentional performance and its intentional non-performance are both morally neutral, and p is morally indifferent;

5. $N(Mp)$ and $G(-Mp)$ i.e. p is such that its intentional performance is morally neutral and its intentional non-performance is morally good, that is, p is supererogatory in the sense of forbearance;

6. $B(Mp)$ and $N(-Mp)$ i.e. p is such that its intentional performance is morally bad and its intentional non-performance morally neutral; performance of p is therefore offensive, but not forbidden, and

7. $B(Mp)$ and $G(-Mp)$ i.e. p is such that its intentional performance is morally bad and its intentional non-performance is morally bad; performance of p would be wrong or forbidden.²⁶

Now such a classification scheme has considerable attractions. It is based on a version of what Mellema has termed the 'standard model'. It purports to account for intentionality. It also avoids the inconsistencies of Chisholm's earlier efforts at categorization of moral acts which, as noted

²⁶ibid, p. 329-30.

above, includes one classification with no members, i.e. the class of permissible villainous or diabolical acts. It distinguishes usefully between two types of supererogatory acts. But like the first attempt, this classification system is based on types of activities rather than on a concept of moral agency. It does not discriminate between heroic and trifling acts, thereby treating all supererogatory acts of commission whether of the nature of a common courtesy or an act of a Good Samaritan as indistinguishable. It also retains a category of moral indifference or neutrality, which we have previously argued is an unnecessary encumbrance for the assessment of actions which do have moral value. Such permissible actions are better redistributed as either duties, offenses or supererogatory acts, or left outside the system of classification of moral actions. Furthermore, and more substantially for the purposes of our inquiry, Chisholm and Sosa fail with this classification to discriminate within the category of obligatory acts between duties of perfect and imperfect obligation.

Since these attempts at logical analysis of the categories of moral experience, several writers have contributed valuable insights. One particularly useful scheme advocated by Paul D. Eisenberg reduces the number of categories to i) the obligatory, ii) the forbidden, iii) the permissible and justifiable, iv) the indifferent, v) the supererogatory and vi) the offensive. Eisenberg explicitly recognizes the distinction between the two types of actions which are in a broad sense required, i. e. the obligatory and the "permissible and justified," referring to both items as

variations on “right.”²⁷ Eisenberg might have found it more convenient and certainly more in line with classical thinking if he had reclassified these categories simply as perfect and imperfect duties, respectively. This ensures that they correspond with variations of right, i.e. perfect rights and imperfect rights. That he does not do so is likely because he discerned in Kant’s teaching a weaker distinction between them than is generally presumed. Eisenberg writes that “there is no hard and fast dualism here, but (at best) a continuum of duties that are of wider or narrower obligation.”²⁸ However, the requirement that perfect duties can be enforced and are matched by perfect rights marks the distinction between perfect duties and imperfect duties in a clearer way than the distinction between imperfect duties and supererogatory acts, notwithstanding Kant’s comments on duties of wider or narrower obligation.

Nonetheless, Eisenberg’s contribution is important for an understanding of the field of moral action, particularly from a Kantian context. Eisenberg believes, together with other Kantian scholars, such as Gregor, that Kant’s views about perfect and imperfect duties changed from the conventional view of them which he seems to have followed in the *Lectures on Ethics*, to a transformed account especially in the *Metaphysics of Morals* where he recognized the existence of perfect duties to oneself, and where he developed the view that perfect duties were those which allowed for no arbitrary exceptions, in distinction to imperfect duties

²⁷“The obligatory (or Right 1) we have no right not to do, whereas the permissible and justified (or Right 2) we have a right either to do or not to do.” Eisenberg, p. 255.

²⁸ibid, p. 262.

which do allow for arbitrary exceptions.²⁹ Eisenberg states that the indifferent is “what one has a right to do, or not to do because what one does is outside the area of morality.”³⁰ To Eisenberg, as to other philosophers who make similar claims, we again make the general rejoinder that if some action is “outside the area of morality,” it is surely improper to include it inside the area of morality, that is, to insist that it can have status as a category of ethical or moral action. While one may speak of having a right to play one card rather than another, or to tie up one’s left shoe before the right, there are no moral requirements to do so. Such actions are, for the most part, outside the scope of inquiry into moral action.

An additional argument against Eisenberg’s classification is advanced by Onora Nell who claims that these ‘neodeontic’ categories are not primitive, i.e. they cannot be defined independently of one another (it does not matter which) of the deontic categories. She contends that an etymological definition of supererogation as acts beyond duty is unhelpful because it defines a ‘neodeontic’ category in terms of a deontic one. But arguments linking duties to acts of supererogation are abundant. Heyd, it will be recalled, contended that both types of moral action share a common scale of values and that supererogatory actions are both correlative and continuous with duty. Most supererogationist writers claim that supererogatory acts only arise in contexts where duties are clearly understood. But Nell herself is subject to analogous criticism when she

²⁹Eisenberg also notes that “sometimes Kant meant perfect duties enjoin or prohibit particular actions whereas imperfect duties enjoin indeterminate action in pursuit of an obligatory end.” *ibid.*

³⁰*ibid.*

claims that “Kant did allow for acts which are meritorious in a certain way without being obligatory,”³¹ i.e. supererogatory, but that it is “relatively trivial”³² that he calls such actions duties. The obvious rejoinder is that it is not at all trivial, because the entire weight of Kant’s work is to stress the all-inclusive nature of duty.

Another response to Nell’s challenge takes up her concern about terminology. Her claim that Eisenberg’s list of moral categories is not primitive could be seen as applying with even more force to the five-part model we propose, particularly because of the employment of four concepts involving duty.³³ But several philosophers believe the use of the term duty is itself a problematic one. It will be recalled that Sidgwick believed that duty was such a simple concept that it could not admit of a logical definition. T.C. Hall observed that the origin of the term ‘duty’ is mysterious and not capable of resolution in terms of standard ethical theory. R.B. Brandt, whose work in this area is supported by contractarian theorists,³⁴ argues that the basic difference between obligations and duties as the concepts have evolved is that obligations find their paradigmatic applications in promises and agreements, whereas duties are generally associated with a given station or position in an organization.³⁵

³¹Nell, 1975, p. 96

³²ibid.

³³i.e. offenses as less than duty requires, perfect duties, imperfect duties and supererogatory acts as more than duty requires.

³⁴Rawls refers to Brandt’s work and Richards draws upon it.

³⁵For Brandt, the paradigmatic features of obligations are that:

i) a roughly specifiable service is required of one person, ii) two parties are involved - the one who is required to pay the service, and the one for whom, or at the bidding of whom, the service is to be performed, and iii) the existence of a prior transaction, for which a promise of benefaction is the source of the relationship.

Duties, by contrast, are exemplified by the following features: i) an individual occupies an office or a station in an organization or some kind of system, ii) a certain job is deemed of some value for the welfare of the organization, iii) this job is associated with the

Furthermore, Feinberg notes that in nearly all cases when we speak of duty, the term “responsibility” can be used. Chapter Four above favours such an interpretation.

In this light, therefore, perfect and imperfect duties may well be primitive. While supererogatory actions are usually explained in reference to what is familiar and known, i.e. as involving more than required even by imperfect duties of wide latitude, they can be explained in terms of perfections or excellences outside a duty-bound context. Acts of saintliness, for example, are more easily so described than acts of heroism. Similarly, offenses may be described in terms of varying degrees of evil, rather than as permissible derelictions of duty. However, there are important limits on exercises of this nature: degrees of overlap and uncertainty do exist between certain categories, and there is a sense in which all of them are transitional passages.

The most recent writings on this theme from the perspective of deontic logic support the contention which I have ascribed to the common sense view, namely that there are only five categories of moral action: the obligatory, the supererogatory, the neutral, the offensive and the forbidden.³⁶ This, it will be recalled, is the “standard system” as described by Mellema. But Mellema argues that the standard system cannot account for acts of ‘quasi-supererogation,’ which he defines as actions praiseworthy to perform but blameworthy to refrain from performing.³⁷ In securing

office occupied by the individual, and iv) performance is expected and required of that individual. See Brandt, p. 388.

³⁶This is the order given by Mellema. See Mellema, 1991, p. 127.

³⁷ibid, See p. 125 and 126.

this insight, he acknowledges that the concept of blameworthiness in connection with an act of supererogation involves a leap beyond deontic logic to aretaic categories, that is to discourse about character. But Mellema's definition of quasi-supererogation is remarkably similar if not identical in all essential respects to the conventional conception of an obligatory action, i.e. as Chisholm states it, an action whose intentional non-performance is morally good and whose non-performance morally bad.

But we have noticed above that criticism is made of failures to perform supererogatory acts. Indeed, genuine acts of supererogation can also be criticized, and it is pointless to pretend, as does Heyd, that they ought not to be.³⁸

A recent contribution in this area by Gregory Trianosky contends that moral agents typically give excuses for failing to perform supererogatory acts because they recognize that while no negative deontic judgements are appropriate in such cases, negative aretaic judgements are appropriate.³⁹ The difference is that aretaic judgements assess inwardness as best they can, whereas deontic judgements assess outward aspects of moral action.⁴⁰ In defending the liberal model of moral agency, Trianosky stresses that valid deontic principles for virtue, furthermore, must be all public and conventional, whereas valid aretaic standards of vice are to a

³⁸See Steiner, quoted above, 1989, p. 53

³⁹The notion that the study of excuses might provide insight into the topography of moral philosophy was first outlined by J.L. Austin in his essay "A Plea for Excuses" in which he claims that in examining excuses, we examine "cases where there has been some abnormality or failure; and so often, the abnormal will throw light on the normal." (Austin, 1961, p. 127).

⁴⁰See Trianosky, p. 31.

large extent private or personal. In consequence, Trianosky argues that the treatment of outward actions is a social question.⁴¹

Mellema uses these insights, together with the concept of quasi-supererogation to defeat anti-supererogationists. He claims that Trianosky's contributions require explanations which venture into virtue ethics and that a complete characterization of supererogation must appeal to moral precepts from the theories of virtue as well as theories about right conduct. While Mellema has correctly seized upon an intriguing aspect, it is less clear that his concept of quasi-supererogation (together with a parallel concept of quasi-offence) is sufficiently distinct to be simply added to the standard five-part system as he proposes. Mellema holds that an act of quasi-supererogation is similar to an act of supererogation, except that it is blameworthy to refrain from performing it. It is, in other words, acceptable to criticize failure to perform a quasi-supererogatory act.

Two critical responses to this suggestion seem appropriate. The first is that all supererogatory actions are subject to valid criticism from some perspective. Mellema's unstated assumption is that totally supererogatory actions are never blameworthy. But the valiant grenadier may be seen as

⁴¹Trianosky notes that the liberal theory rests on two assumptions."A. Outward action is public...Outward actions are in principle and usually in practice public. Hence the question can always be raised of how others should react to them: are they to blame the agent for what has been done? say to him and to each other that he has only done what can in reason be expected? tolerate what he has done? condemn it? praise it? ...Some of these questions are to be settled by deontic principles ...whereas others can be settled only by reference to standards for deontic judgements of the person.

B. Inward actions are private. Judgements of viciousness (and the aretaic judgements of the person grounded on them) it is supposed, have a peculiarly intimate character which judgements of wrongdoing (and the deontic judgement of the person based on them) lack. Judgements of vice are not simply judgements of what one does, publicly; so aretaic judgements of the person are not grounded simply on judgements of one's public behaviour. Judgements of viciousness and the attitudinal judgements of the person are, unavoidably, deeper judgements about what one is." *ibid*, p. 37.

simply foolish, and the preaching pretensions of St Francis held to be symptoms of psychological disorder. It is simply a fact that any action may be considered blameworthy from one potentially valid perspective or another. Trianosky contends persuasively that whereas deontic criticism may be inappropriate in the case of a failure to perform a supererogatory action, aretaic criticism may indeed be appropriate. But such criticism is directed more to the character of the moral agent, rather than to the act of supererogation itself.

A second problem with the concept of quasi-supererogation, as Mellema explains it, is that acts of quasi-supererogation are largely indistinguishable from duties. As noted above, Mellema's definition of quasi-supererogation is remarkably similar to, if not indeed substantially identical with the conventional concept of an obligatory action, as stated by Chisholm. But it is also indistinguishable from an imperfect duty, i.e. it is praiseworthy, fulfills no direct obligation, but is held to be blameworthy if omitted. The key example given by Mellema to explain his view is that of keeping one's temper under provocation, and resisting temptation to take revenge. In line with the patterns of moral action outlined in this thesis, such an action seems more of a perfect duty to oneself to restrain emotional excess than even an imperfect duty, let alone an act of supererogation, however qualified.

Deontic and Aretaic Categories

We conclude from this discussion that however we choose to arrange categories of moral experience, a reasonable selection cannot be made without acknowledging in some appropriate manner the distinction between deontic and aretaic moral categories. The most satisfactory account of such

a reconciliation is offered by Frankena, who recognizes the standard system as deontic categories,⁴² and adds to it three aretaic ones, i.e. 1. what is morally good, 2. what is morally bad, and 3. what is aretaically indifferent. Frankena's purpose is to challenge the validity of all efforts to classify moral actions on the basis of deontic principles alone. He implies that the simple tripartite classification is not simply inadequate, but also harmful, as it leads to fanaticism - i.e. "making superhuman acts of heroism duties for all."⁴³ He states furthermore that philosophers have for a long time recognized the existence and desirability of a fourth category {in addition to the traditional trichotomy} for they have used aretaic categories as well as deontic ones."⁴⁴ The major problem of classification, therefore, turns on the issue of whether or not another morally favourable deontic predicate other than the obligatory is to be recognized. By recognizing both deontic and aretaic categories, he claims the conflict is resolved.

Frankena's explanation of why he included a co-extensive schema of aretaic categories is interesting. He states that he was struck by a footnote in H.A. Pritchard's 1912 article entitled "Does Moral Philosophy Rest on a Mistake?" in which Pritchard noted that the lives of people whom we most admire seem to have no dominating concern for matters relating to moral

⁴²Frankena does not use the standard terminology, but his statement is clearly a variation on the standard system. His formulation of the five deontic categories is as follows: 1. what is strictly required or obligatory, duties in the strict sense, 2. what is strictly forbidden or wrong, violations of strict duties, 3. what ought to be done in a wider sense, but is not strictly a duty or obligation, what one has a right not to do, 4. what ought in a wider sense not to be done, but is not strictly forbidden or wrong, e.g. what Chisholm calls offenses, 5. what is deontologically indifferent - not morally required in either the wider or narrower sense, nor morally prohibited in either sense. See Frankena, 1970, p. 102.

⁴³ibid.

⁴⁴ibid.

obligation, but were concerned about acting courageously, benevolently and gratefully.⁴⁵ Besides the judgements and standards of moral obligation and goodness,” notes Frankena, “we have others of generosity, courage, family feeling, public spirit etc and some people live, primarily at least, by these other judgements and standards and are admired even though moral philosophy disparages or neglects them.”⁴⁶ He sees, therefore, that an uncompromising deontic approach of the kind advocated by Chisholm and his colleagues is in need of adjustment as to accommodate the concerns of virtue such as love, honesty and sincerity. But a virtue ethics is unable to propound any judgements or principles about what is right or wrong from its basic ideals of virtue: “a complete and pure ethics of virtue would tell us, without any categorical imperative ‘be virtuous, e.g., be courageous, be generous, etc, and then do as you please’ and insist that this is the whole law and the prophets.”⁴⁷ Both elements are needed, it would seem therefore, in order to obtain a clear idea of the nature of moral action.

Frankena’s two-stage classification has considerable appeal: it accounts for supererogatory acts and offences, and also avoids a number of the disagreeable features of Chisholm’s approach as explained above. Frankena’s aretaic account avoids the trivialization of supererogatory actions, and he fully takes into account the moral agent and his dispositions. Frankena situates supererogation in deontic category #3, “something that

⁴⁵ “If we turn from moral philosophy to any vivid account of human life and action such as we find in Shakespeare, nothing strikes us more than the comparative remoteness of the discussions of Moral Philosophy from the facts of actual life. Is not this because while Moral Philosophy has, quite rightly concentrated its attention on the fact of obligation, in the case of many of those whom we admire most and whose lives are of the greatest interest, the sense of obligation, though it may be an important is not a dominating factor in their lives?” (Pritchard, p. 12).

⁴⁶Frankena, 1970, p. 150.

⁴⁷ibid, p. 154.

ought to be done in a wider sense, but which is not strictly a duty or obligation, what one has a right not to do.” But he does not consider that the first aretaic category also applies to acts of supererogation, thus denying them any treatment as virtuous acts. Nor does the third deontic category distinguish between wider obligations in the Kantian sense of imperfect duty. As shown above, a more complex account of supererogation is required than simply combining all “wide” obligations together under one general heading. Finally, it should be noted with some measure of disapproval that this account includes not just one account of morally indifferent actions, but two, whereas we have attempted to show at several junctures that any such category is superfluous.

To end by returning to the beginning, let us recall that Urmson was particularly concerned with rescuing the “higher flights of morality” for philosophical analysis. These higher flights led him from “rock bottom duties for all and from every point of view,”⁴⁸ through “absolute duties which can be extracted like a debt,”⁴⁹ and also through “a range of actions which are of moral value and which an agent may feel called upon to perform, but which cannot be demanded and which cannot be called wrongdoing.”⁵⁰ If our analysis is correct, Urmson’s “rock bottom duties” and absolute duties are perfect duties alike⁵¹ and his category of “higher flights of morality” includes both imperfect duties and acts of supererogation. He is correct, however, in arguing that “the higher flights

⁴⁸Urmson, p. 204.

⁴⁹ibid, p. 208.

⁵⁰ibid.

⁵¹This is assuming, of course, that rock bottom duties exclude any imperfect duties. But since any definition of rock bottom duties ought to include some mention of being at least civil in some respect, in addition to a restricted range of perfect duties, this may be an insecure assumption.

of morality” can be regarded as more positive contributions that go beyond what is universally to be expected; but while not exacted publicly, they are equally pressing in foro interno on those who are not content merely to avoid the intolerable.”⁵²

⁵²ibid, p. 215-216.

CONCLUDING REMARKS

Peter Singer likens ethics to a jig-saw puzzle and claims that “the puzzle of ethics is starting to come together and that few, if any pieces are missing.”¹ This thesis has, of the thousand or so pieces in this puzzle, dealt in detail only with three - supererogation, imperfect duty and the structure of moral action. We attempted to show that both supererogation and imperfect duties are separate categories of moral action situated on what can be described as a continuum of action with diabolical acts at one extreme and acts of saintliness and heroism at the other, occupying, from the point of view of an independent observer as it were, fixed points on a line of imperceptible gradations in value.

We have shown how the traditional division of moral actions into the obligatory, the permissible or morally neutral, and the prohibited was challenged by proponents of the concept of supererogation. We established that a defensible classification of moral actions includes those considered as either prohibited, offensive, perfect duties, imperfect duties or supererogatory acts. Our discussion of supererogatory acts provided a justification of the concept of supererogation, but also revealed that the links between supererogation and imperfect duties were strong and continuous. We determined that supererogatory actions are characterized by several features distinguishing them from imperfect duties, but that they characteristically involve voluntary choices of self-sacrifice in a way that is not required by actions of imperfect obligation. Nonetheless, we also

¹Singer, 1991, p. 545.

determined that the borderground between these categories cannot be demarcated with logical exactitude, largely because they both deal with virtuous actions. The determination of actions of moral responsibility on the basis of deontic criteria alone was found to be insufficient, because a complete account of moral agency must include considerations relating to inward processes as well as external actions, although it was made clear by our readings of the modern natural law philosophers and others that aretaic elements must be taken into account, and that predominance in assessing moral actions as praiseworthy or blameworthy must be given to the outward nature of such actions.

Our study revealed that the principal categories of moral experience were largely apparent to common sense thinking which classifies moral actions as obligatory, supererogatory, neutral, offensive or prohibited. We showed that this intuitive concept has important cross-cultural appeal, as well as political consequences, but that philosophical study required recognition of several adjustments: i) exclusion of the category of morally neutral acts as a type of moral action, ii) inclusion of the category of wider imperfect duty distinct from the strict, narrow concept of perfect obligation, iii) recognition of the universal nature of the aretaic categories of praiseworthiness and blameworthiness², and iv) recognition that these basic categories overlap to some extent by imperceptible gradations and that precision in such matters cannot be achieved without sacrificing elements of value.

²It is always correct to state that one ought to look after one's mother in old age: to do so is praiseworthy; not to do so is blameworthy.

The justification and value of supererogation by moral agents has been amply set out in this thesis, notwithstanding a detailed study of powerfully argued views to the contrary. The question of supererogatory action by collectivities remains a problematic concept. But the general view that nation states must frequently act on the basis of concern for perfect rights and duties and occasionally out of implied recognition of imperfect rights and duties does not exclude the possibility that other groups enjoying the support of public authorities pursue imperfect duties to others on a scale of values which can indeed lead to supererogatory actions. It is in this context of moral value that the threshold issues of cosmic importance will be decided.

Finally, we note that the principal methods of ethical analysis - Kantianism, utilitarianism and virtue-based ethics have all secured positions as legitimate tools of analysis and that efforts to reduce one method to another, or to exclude one or the other are unfaithful to the facts of moral experience in choice and action. The sources of moral value are plural,³ and both more complicated⁴ or complex⁵ than generally expected. But we must presume that moral complexity can be manageable⁶ simply because the human race must manage the cosmic threshold issues noted in the introduction to this work, if it is to have a decent future at all. One of the standards by which the success or failure of such efforts will be measured is provided in the present document.

³See especially Larmore, p. ix and 151ff. and Hare, 1991, p. 461.

⁴See Urmson p. 205.

⁵See Larmore, p. ix ff.

⁶Urmson, p. 212.

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