Kantian Review (2025), **30**, 387–409
doi:10.1017/S1369415425000160

KANTIAN REVIEW
CAMBRIDGE UNIVERSITY PRESS

ARTICLE

Equity in Kantian Morality: Unmuting the 'Divinity Who Cannot Be Heard'

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Abstract

The concept of equity is indispensable to Kantian morality. This claim is controversial given Kant's labelling of equity as an unenforceable right and his reputed moral absolutism. A need for equity, however, can be elicited from within his writing. For Kant, human dignity constitutes the basis of duty. Conscience demands conformity with duty. Our duties to positively serve humanity are indeterminate. The need for equity arises, therefore, to guide conscientious deliberations in applying moral principles appropriately toward that end in particular situations. This is especially pronounced when one strives to support the dignity of others consistently with one's own dignity.

Keywords: equity; conscience; dignity; morality; positive duties

1. Introduction

A reader of Kantian moral philosophy might raise an eyebrow at the claim that equity (*Billigkeit*; *aequitas*) is an important concept within it. In the *Metaphysics of Morals*, Kant neither accepts equity as a basis for rights that can legitimately be upheld through external compulsion nor analyses it under the rubric of virtue (*MM*, 6: 234–5).[1] In the *Groundwork of the Metaphysics of Morals*, his formulation of the Categorical Imperative sounds inhospitable to equity because it demands strict conformity of our actions only with universalizable maxims (*G*, 4: 420–1).[2] If equity denotes the endeavour to apply relevant norms in a manner that accounts for the particularity of circumstance, then one might not immediately appreciate how any such notion could play a major role within Kant's moral system. This article, however, demonstrates that equity is indispensable to Kantian morality. For Kant, the human dignity of persons as ends in themselves provides the basis of moral duty which should inform our consciences, not only in prohibiting wrongdoing but also in promoting positive conduct. If we take seriously our duty to actively serve human dignity, then, when pursuing it, we should undertake conscientious deliberations that are equitable, meaning we strive to apply moral principles in a manner most appropriate to that end in the circumstances. This

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need is not merely for prudence but entails that prudence be exercised equitably in service of moral ends. The demand for equity is especially pronounced when moral principles seem to clash.

Section 2 of this article establishes that the question of equity's significance within Kantian morality demands an answer. While Kant recognizes the need for equity within one's internal court of conscience, neither he nor Kant scholars adequately explicate the role it plays therein. Section 3 reasons that, given Kant's strict prohibitions of inherently wrongful acts, the equity he acknowledges as operating within the court of conscience must concern his prescription of positive duties. Whereas conscience recognizes negative duties as concerning outright violations of human dignity, positive duties concern active service of human dignity and, therefore, circumstantially informed judgements. Section 4 analyses Kantian positive duties closely. As conscience calls us to serve human dignity through positive duties, the characteristic imperfection of these duties does not leave them subject merely to judgements of prudence. It requires us to decide to act equitably as we strive to optimize our service to human dignity. Section 5 illustrates such a need for equity through an analysis of an inescapable tension that pervades interpersonal dealings. Namely, between our positive other-regarding duty of beneficence and our self-regarding duties to uphold self-respect and avoid servility, both of which must be taken seriously if we are committed to human dignity. Section 6 concludes that equity is indispensable within Kantian moral philosophy.

This article contributes direct and indirect benefits. Most directly, it contributes to filling the 'equity gap' within Kant scholarship. By extension, it aims to enhance our understanding of Kant's imperfect duties by illuminating how they are characterised by the need for equity.[3] Hopefully, in turn, this can then contribute to an already growing body of further work on relationships between equity, conscience, and dignity in moral, legal, and political theory (Rudolph 2023; Kessler 2024; Madden 2024), as these concepts proliferate through contemporary global discourses.[4]

2. The problem

Equity's significance within Kantian moral philosophy remains to be sufficiently elucidated. This need is left unresolved by Kant's own work which rejects equity as a basis of rightful compulsion *but* acknowledges its authority in the sphere of conscience. Neither Kant nor scholars of his work satisfactorily analyse equity's place in the latter. Nonetheless, equity denotes context-sensitivity in applying norms, aimed at upholding an underpinning moral end. An account, therefore, is needed of how equity figures into Kant's moral philosophy, which professes human dignity as precisely that end.

2.1 Kant discusses equity

Kant writes of equity as 'a mute divinity who cannot be heard' in a civil court (*MM*, 6: 235). In so doing, he simultaneously confines its authority and recognizes its venerability. He disputes not the merit of equity's motto which is as close as he comes to defining it – 'the strictest right is the greatest injustice' – but its ability to provide a basis for coercion (ibid.). While Kant asserts that equity only grants unenforceable rights to claimants who seek to hold defendants to account, he maintains that the latter should be equitably compelled by their own internal '*court[s] of conscience*'

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(ibid.). Kant, therefore, recognizes that equity bears moral authority insofar as the individual should invite it to inform their conscience in deciding how to act. He does not, however, explicate why and how.

This is at least partially due to his treatment, in the *Metaphysics of Morals*, of equity as a unique species of 'right without coercion' rather than analysing it under the heading of virtue. Instead of examining a virtuous duty to act equitably, he proceeds on the basis that 'people think of' equity as 'a right in a *wider* ['alleged' or 'ambiguous'] sense' (*MM*, 6: 233). He locates it awkwardly within 'the *intermundia*' between strict 'rights' (analysed in the Doctrine of Right) and inexact 'ethics' (analysed in the Doctrine of Virtue). Whereas the former is precisely determinable and enforceable through external coercion by the state, the latter requires latitude of judgement, 'some room for exception', and enforcement only through the individual's conscience (6: 234). Kant treats equity as belonging to an intermediate category because:

> (considered objectively) [it is] no ... basis for merely calling upon another to fulfil an ethical duty (to be benevolent and kind). One who demands something on this basis stands instead upon *right*, except that he does not have the conditions that a judge needs in order to determine by how much or in what way his claim could be satisfied. (*MM*, 6: 234)

Equity is stronger than a '*mere*' calling of virtue, but weaker than an enforceable right. Having categorized it separately as such before expounding the Doctrines of Right and Virtue, Kant brushed equity aside and omitted to explicate its significance within the latter compartment of morality.

This decision in classification is understandable but does not extinguish the need to analyse the necessity of equity within Kantian virtue. In the above quotation, Kant recognized that people *do* make claims through equity and that the so-called 'rights' the claimant thereby calls upon the defendant to honour are not *invalid*, although they cannot legitimately be judicially enforced. Moreover, Kant was swimming against a tide in which scholars considered equity an enforceable claim of right. Allen Rosen observed that (1993: 108–9):

> [I]t is easy to see why Kant wished to accord [equitable rights] *some* recognition as rights of justice [given] [t]he problem of having to reconcile [the] traditional view that equity belongs to the sphere of justice with his own system of rights and duties. The solution he developed in [*MM*] was to distinguish wide from narrow justice and to place rights of equity in the former category, thereby allowing unenforceable juridical rights. Most likely, the solution was suggested to him by earlier writers.

Unsurprisingly, Kant deemed it necessary to account for the 'claimable' nature of equity while emphasizing its unenforceability. If a Venn diagram of Kantian right and virtue were drawn, equity would fall within the overlap. The former aspect is noteworthy insofar as the one who seeks equity is right to insist upon it but goes no further. The virtuous aspect of equity's nature within that overlap requires examination.

The corollary of Kant's treatment of equity as an unenforceable right is that it retains conscience-commanding authority in the domain of virtue. While the

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distinction between 'right' and 'virtue' is 'central to Kant's practical philosophy', it is, as Onora O'Neill emphasizes, inexhaustive and non-exclusive, respectively, because duties of 'right' like 'equity' persist notwithstanding unenforceability and because such duties can be upheld virtuously 'as a matter of principle' (O'Neill 2018: 209). A judge could objectively recognize an equitable 'right' which the defendant *should* honour. Kant could consistently countenance judicial *admonition* to that effect (Shanske 2005: 2080). To coerce the defendant to honour such a 'right', however, would be to adjudicate on a 'subjective basis', lacking 'the conditions [needed] to determine by how much or in what way [the] claim could be satisfied' (*MM*, 6: 234). Consequently, for Kant, such coercion must be illegitimate because it infringes freedom by binding one to an 'active obligation' contrary to one's own choosing (6: 274). Objectively, the 'right' can be pronounced, but only subjectively can it be measured. Equity can, therefore, be conceived as bearing dimensions of both 'right' and 'virtue'.

This is affirmed by Kant's simultaneous recognition of an 'ill' and rejection of any justiciable cure in his two examples. In both situations, it would be inequitable and unconscionable for a defendant to ignore circumstances transpiring since the formation of a contract and refuse to pay a claimant above the stipulated amount. A claimant might insist on greater payment based on equity, if they initially entered a partnership agreement that set an equal distribution of profits but ultimately contributed more than the others to the endeavour (*MM*, 6: 234). One might claim that equity warrants the employer paying above the agreed rate because inflation has since rendered that amount unfair (ibid.). While Kant says these claims concern unenforceable 'rights', he still recognizes that they should fasten upon conscience (6: 235). The virtuous individual, knowing it would be wrong to withhold additional reimbursement, would be called by conscience to the labour of determining an equitable increase. That the individual should do so is reinforced by Kant's acceptance that a judge who hears claims of equity against the state 'may and should listen to equity' despite this not being strictly required. The claimant's claim of 'right' is a unique one that can only be upheld by the virtuous (state or individual) defendant's conscience. Indeed, the defendant's insistence on their 'strictest right' to not pay more than agreed is the 'greatest injustice' against the claimant (ibid.). Raef Zreik argues that Kantian equity 'does not mingle with the ethical' but constitutes only a right that is unenforceable for 'institutional incapacity' (Zreik 2023: 138). The absence of such capacity within courts of law, however, leaves the individual's conscience to enforce equity as a matter of virtue. Kant scholarship remains in need of a sustained analysis of equity in that capacity.

Kant's earlier remarks about equity amplify its necessity as a concern of virtue for the conscience-bearer and the need to analyse it as such. Nine years before *MM*, Kant implied equity's importance in guiding conscience, without analysing it, in his *Critique of Practical Reason*. We can justifiably pass some judgements against wrongdoers, he writes, 'which, though made in all conscientiousness, yet seem at first glance quite contrary to all equity' (*CPrR*, 5: 99). Kant believed that it is not inequitable to strictly judge a recalcitrant wrongdoer, whom others might deem 'incapable of improvement', because we know, as does the malefactor, in conscience, that he has freely chosen an immoral path (ibid.). The implication is that equity still has some role to play in judging an individual's conduct through conscience; for Kant it would come

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into play when judging someone who laboured under an honest misunderstanding (*MM*, 6: 401). Strikingly, in his *Lectures on Ethics*, two decades before *MM*, Kant stated that equity 'belongs only to ethics'. This is because it 'is not an external law: its validity is only *coram foro conscientiae*' (*LE*, 35). Kant's position in *MM* only changes insofar as he introduced and emphasized the 'unenforceable right' element; he maintained its venerability within the conscience. Allen Rosen considers the position in *LE* more consistent with Kant's 'claim that the essential difference between duties of justice and ethical duties is that the former but not the latter are enforceable through coercion' (Rosen 1993: 110). As Zreik observes, Kant's 'process of distinctions and distinctions within distinctions', and 'move[ment] from technical distinctions to those based on the institutional level', leaves the reader to discern which distinctions are most workable (2023: 138). Kant might have elaborated on equity had he another lifetime to continue his intellectual enterprise. His simultaneous maintenance of and limited discussion of equity's virtuous necessity, however, leaves work to be undertaken.

Although Kant's insufficient attention to equity has generated responses within certain spheres, none make its place within ethical decision-making their particular focus. As Alice Pinheiro Walla observes, Kant scholars leave 'a remarkable omission ... with regard to equity' (Pinheiro Walla 2020: 80). Prominent scholars of Kantian moral philosophy, including Mary Gregor (1993: 9–100), Thomas Hill Jr and Adam Cureton (2018: 274), and Onora O'Neill (2018: 218, 221), consider his thoughts on the concept no further than within a couple of pages. Recent contributions draw from Kant in theorizing equitable approaches to social and political justice. Pinheiro Walla contends that Kant's exclusion of equity from the sphere of judicial enforceability leaves it to operate as a basis for, not merely moral rights, but 'welfare rights', to be enacted via 'improvements and reforms' in response to systemic injustices (2020: 77). Jason Fisette argues that equity, as Kant understood it, should inform the sovereign's conscience toward legislating reparations for slavery (Fisette 2022: 691–4). Avery Kohlers extracts aspects of Kantian moral philosophy to support a 'structural notion' of equity under which we have a duty to undertake political action in solidarity with oppressed peoples (Kohlers 2016: 29). Pinheiro Walla, Fisette, and Kohlers give the relationship between Kant and equity much-needed attention without focusing specifically on its virtuous, conscience-informing, role within Kantian morality. Moreover, legal minds have found Kant's discussion of equity as right either unsatisfactory or begging for qualification (Brown 1962: 43; Bennington 2011; Ripstein 2004: 30). This further indicates that his barely-over-a-page treatment of equity in the *Metaphysics of Morals* left significant work to be done.[5] It is time for a study of equity's significance within Kantian virtue, that is, inside the court of conscience.

2.2 *Upholding ends*

Once it is appreciated what equity denotes, its indispensability in Kant seems to lie in its facilitation of conscience's endeavour to uphold what he considers the ultimate moral end. If equity embodies the maxim that 'the strictest right is the greatest injustice', then at least in some kinds of situations a norm (e.g., giving others their due) should be applied in a manner that is ethical considering the relevant circumstances (e.g., paying above the agreed and legally binding amount when unforeseen events require such to

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avoid unfairness). Equity denotes an approach to applying relevant morally laden norms which accounts for particularity and circumstance. That is, in relation to a given end. It is, as Martha Nussbaum says, 'judgement that attends to the particulars' (Nussbaum 1993: 85). More specific definitions of equity are found in which thinkers connect the notion to the ideals they believe it should promote or express their understanding of what it requires in a given context. Any understanding of equity, including Kant's, will be determined by the end one has in mind.

Like other broad concepts, equity gives rise to different, but not always incompatible, conceptions.[6] A philosopher, when asked 'what is equity?', might begin their response with reference to Aristotle's *Nicomachean Ethics*, concerning the flexible application of legal rules to circumstances not conceived by the legislator and/or a personal virtue of inclining toward favourable treatment of others (Aristotle 2004: 1138a, 1137b–1138a; cf. 1909: 1375a). A lawyer working within an Anglo-American jurisdiction might respond that it is a 'mollify[ing]' body of legal doctrines and remedies supplementary to those that comprise the common law (Heydon, Leeming, and Turner 2014: 5). A social reformer might say it concerns treating people fairly with appropriate regard to their difference of circumstance, especially of disadvantage or marginalization (Frederickson 2010). In each instance, equity refers to applying relevant norms in a manner that takes account of particular factors and circumstances that contextualize the relevant situation. When one speaks of one's equity in a business context, referring to the value of one's assets minus debts, this entails making an adjustment in calculating what is rightly 'theirs', factoring in the amounts within their holdings which would be due to others. When Aristotle writes of equity in the *Rhetoric*, he focuses on the need to adapt the style of one's communication so that one's message will be most acceptable to the audience (2007: 1356a). Across different spheres of life, the concept of equity generates different conceptions in the minds of different thinkers.

Whenever equity informs our reasoning, we seek to ensure that our application of norms is undertaken consistently with an end that we aim to uphold or avoid undermining in our judgements. When Aristotle writes of equity in judicial contexts, he advocates for applying legal norms in a manner that best upholds the end of justice as the legislator would have conceived it in the present circumstances (2004: 1138a). When he writes of equity in contexts of interpersonal dealings, he implores temperance of self-regarding norms with other-regarding norms, especially with respect to another's circumstances, in pursuit of the end of virtue. His writing about rhetorical equity concerns adapting norms of communication toward the end of persuasion (ibid.). When a notion of equity is applied, one has an end in mind in terms of a goal to be pursued or a pitfall to be avoided.

While a given end that draws support from equity might not bear an overtly moral character, if one accepts – as do Aristotle and Kant – that human activity should be directed to an *ultimate* end, then the former end should really be pursued in service of the latter. That is, for Kant, other than when one *merely* permissibly and prudently pursues one's happiness without undermining a moral end.[7] For Aristotle, who distinguishes between instrumental and self-sufficient value, one might adopt certain means in pursue an 'end' of housebuilding, medicine, rhetoric, law, or virtue, to serve the ultimate end of the 'good life' which is characterized by contemplation

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(2004: 1094a–1097b). He would employ considerations of equity when needed to ensure that his application of relevant norms is directed, within each sphere, toward optimal accomplishment in pursuit of the best possible (most contemplative) life. One need not accept Aristotle's system to appreciate the general point that if some ultimately self-sufficient moral end should be pursued, then any notion of equity, engaged throughout manifold endeavours, should ultimately be pointed toward it. This brings us to the question of how Kant requires equity to operate in support of the ultimate moral end he has in mind.

3. Dignity, conscience, and a role for equity

Given that Kant acknowledges equity's place within conscience, we must determine specifically what role it plays therein. This role cannot be in the sphere of negative duties because Kant's understanding of moral duty as articulated in his first formulation of the Categorical Imperative excludes any conception of equity which would promote undertaking actions of an immoral nature for the sake of an ostensibly greater good. Considering the second formulation in the Principle of Humanity, these actions bear such a nature because they inherently oppose human dignity. The court of conscience, then, can always deliver *prohibitive* verdicts straightforwardly without need for equity. When it comes to the more complicated questions about performing positive moral acts, however, conscience requires us to strive to account for circumstances when applying norms which derive from human dignity, in a manner most suited to serving that ultimate end. The role Kant acknowledged for equity within the court of conscience, therefore, would have to be in facilitating such judgements.

3.1 The categorical imperative

The strictness of moral duty conveyed when Kant first enunciates the Categorical Imperative might strike one as hostile to equity and inconsistent with his accepting its voice within conscience. The Categorical Imperative is so-called because the imperative to act according to duty is categorical: '*act only according to that maxim which you can at the same time will that it become a universal law*' (*G*, 4: 421). Kant rephrases this formulation: '*so act as if the maxim of your action were to become by your will a universal law of nature*' (4: 422). If morality were to consist solely of negative duties, we would need only exercise 'the *faculty of judgment*' within the '*internal court*' of conscience in order to determine whether an act is forbidden under a 'rule', and if so, the verdict condemns it (*MM*, 6: 438–9). It would be wrong, for example, to let desperation drive one to falsely promise repayment to secure a loan, knowing that no one would take any promise seriously if everyone else did the same (*G*, 4: 422). To follow one's inclination here might *seem* 'equitable' but would 'deprive [strict laws of duty] of their dignity' (4: 405). Kant would object to any notion of equity which grants exceptions to prohibitive moral duties. Yet Kant also insists that the moral law embodied in the Imperative entails positive and 'wider' duties (4: 423). If conscience conveys that we should positively do good, and that this can entail judging equitably in light of circumstances – such as by sometimes paying someone more than

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originally agreed – the substance of Kant's moral law must justify both this kind of duty and that of the negative kind.

If Kant stopped at the first formulation, the Categorical Imperative would leave the moral law empty of content. As Paul Guyer writes, it would fail for lack of 'a necessary object of action, recommended by something other than contingent inclination, that could serve as the basis of a universal and necessary principle of morality that is not purely formal in character' (2002: 64). Kant remedies this by introducing 'the idea of humanity as an end in itself' in the second formulation (ibid.). On this basis, we can appreciate that Kantian morality is not only proscriptive *but also* prescriptive, with respect to the end of human dignity, and why it requires equity in the latter sense. This principle and its relationship with conscience enable us to distinguish between kinds of duties which do not require equity and those which do. Those are, respectively, negative and positive duties. The following parts of this section explain Kant's understandings of dignity and conscience, before showing how they exclude equity from the sphere of negative duties and ultimately confine its role to assisting our undertaking of positive duties.

3.2 The principle of humanity

Kant translates (if we might so put it) the Categorical Imperative into the Principle of Humanity thusly: '*So act that you use humanity, in your own person as well as in the person of any other, always at the same time as an end, never merely as a means*' (*G*, 4: 429). In so doing, Kant claims that respect for human dignity is the fundamental law that should inform human action. Moral value is distinct from instrumental value. The former bears a 'dignity' as 'an end in itself'. The latter bears merely a 'price' as something that is replaceable (4: 434-5). For Kant, our 'rational nature' is self-recognizing of its own end status, in its embodiment of the moral law, and gives us 'autonomy', that is, our ability to set our own ends, in accordance with that law which is the ultimate source of dignity (4: 435-6; 446-9). Persons, being bearers of dignity, constitute 'ends', embodying their shares of humanity, are members of the 'kingdom of ends' who recognize each other as such under the moral law which they enact in the maxims of their actions (4: 433). Kant writes that (4: 434):

> [t]he practical necessity of acting according to … duty [rests on] … the relation of rational beings to one another, in which the will of a rational being must always at the same time be considered as *legislating*, since it could not otherwise be thought as an *end in itself*.

If one behaves according to a maxim that is disrespectful to anyone's end status, then one necessarily conducts oneself according to a maxim that one could not universalize because this would be contrary to an inevitable recognition of one's own end status. Thus, the moral law informs the Categorical Imperative with the notion of human dignity which demands respect for each person and their rational capacities in whom that law is embedded.

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3.3 Dignity and conscience

In turn, Kant's account of human dignity must also connect with his view of conscience. This is observed by Susan Meld Shell: '[Kantian] Dignity ... applies to any finite being who has or can be presumed to have a conscience. It is thus something that all human beings possess because we are all co-legislators of the moral law' (Shell 2003: 56). Kant writes that conscience is '*practical reason holding the human being's duty before him*' (*MM*, 6: 400). If so, conscience is what enables us to recognize and uphold the human dignity of ourselves and others in accordance with the moral law. Before explicating this further, we must acknowledge the differences concerning conscience within Kant scholarship.

Marijana Vujošević provides an excellent overview of the debate about which moral capacities, for Kant, constitute conscience throughout his varying references to it (Vujošević 2014: 451–2). Vujošević argues that Kantian conscience reviews moral judgements, rather than making them initially, emphasizing that, elsewhere than the quotation above, Kant ascribes conscience a more limited scope as 'the moral faculty of judgement, passing judgement on itself' (p. 465, citing *R*, 6: 185). Allen Wood, for example, finds Kantian conscience to include both rational and emotional capacities (Wood 2008: 183). Jason Howard considers it a solely emotional function (Howard 2004: 624–5). A plausible reading, as Emre Kazim proposes, could take Kant's 'disparate' usages of the term as referring to parts of the 'same unified concept' (Kazim 2017: 5). Like Kazim (p. 18), this article takes Kantian conscience as at least the capacities of reason which communicate and command conformity with duty, as expressed in the *Metaphysics of Morals* and inclusive of numerous of Kant's more limited references to conscience. It does not include moral feeling which, according to Kant, conscience triggers as an enforcer (*MM*, 6: 402).[8] This approach groups the functions that Kant explicitly describes as conscience in alignment with the common understanding that conscience enables us to know right from wrong.

The point for present purposes, however, is not to resolve the conscience debate. It is that we can hold ourselves accountable to ensure that we uphold human dignity because we all, as rational beings, have a conscience. Kant explicates that human dignity is the substance of the 'universal law' as a universal end (*MM*, 6: 395):

> [A] human being is an end for himself as well as for others, and it is not enough that he is not authorized to use either himself or others merely as means (since he could still be indifferent to them); it is in itself his duty to make man as such his end.

Under that law, Kant writes, everyone 'has a legitimate claim to respect from his fellow human beings and is *in turn* bound to respect every other' (*MM*, 6: 462). Therefore, everyone has 'a duty regarding the respect that must be shown to every other human being' (ibid.).

The universal end underpinning the moral law, then, is what enables it to be known to 'even the commonest' people (*G*, 4: 404). Kant illustrates this universality of conscience through a judicial metaphor (4: 400):

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> [E]very human being, as a moral being, *has* a conscience within him … conscience is practical reason holding the human being's duty before him for his acquittal or condemnation in every case that comes under a [moral] law.

Conscience is reason, as our dignifying capacity for morality, when engaged in practical questions about the quality of what one is to do or has done. If the individual exercises their 'power of judging' responsively to, rather than 'obstruct[ing] the claims of conscience' or 'engaging legalistic quibbles with [it]', they can labour from 'common understanding' to address 'practical matters' in 'seek[ing] sincerely to determine the worth of actions for [one's] own instruction' (*G*, 4: 404).[9] This common understanding must concern human dignity as the fundamental principle of the moral law. Although Kant's writing on conscience does not explicate the link, it necessarily entails that conscience is fundamentally concerned with human dignity. That is because conscience is 'incorporated in his being' to establish an 'authority watching over the [moral] law' (*MM*, 6: 438), the substance of which is the dignity of each person as a moral end (*G*, 4: 395).

This can be appreciated by returning to Kant's prohibition against lying which excludes equity. Pointing to dishonesty, he provides an exemplification of conscience's registration of human dignity (*G*, 4: 423):

> [One] sees himself pressured by need to borrow money. He knows … he will not be able to repay, but also sees that nothing will be lent to him unless he solemnly promises to repay it at a determinate time. He feels like making such a promise; but he still has enough *conscience* to ask himself: is it not impermissible and contrary to duty to help oneself in such a way?

When Kant says, 'has enough conscience', he really means, 'has enough regard for conscience', because he considers every person a conscience-bearer (*MM*, 6: 400). One who makes 'a lying promise', for the sake of procuring a loan, defies conscience and 'makes use of another human being *merely as a means*, who does not at the same time contain in himself the end' (*G*, 4: 429). One who seeks to misdirect a murderer by lying to him has committed an inherent wrong to 'humanity generally' (*RTL*, 65). In turn, Kant says, a liar 'annihilates his dignity as a human being' (*MM*, 6: 429). This means that '[t]hey do not throw away their humanity, but rather, through disregarding it, treat themselves *as if* they have none' (Kerstein 2008: 218). By lying, one also uses oneself 'as a mere means (a speaking machine)' contrary to the moral law embedded in one's humanity (6: 430). One might, to be sure, offer an interpretation of the Categorical Imperative, to correct Kant's own view as expressed here, in recognition of a concern for equity which in such circumstances permits otherwise impermissible acts (Singer 1954: 587). Still, for Kant, defiance of a proscription, which is a perfect and negative duty to oneself or others, is simply morally outlawed and cannot be justifiable through equity because it remains contrary to his understanding of human dignity.

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3.4 Negative and positive duties

If conscience conveys strict moral prohibitions which leave no room for equity, but Kant nonetheless recognises a role for equity in conscience, then equity's work must be in helping conscience to guide us in actively serving moral ends. We can only locate equity's place within Kantian conscience by differentiating between negative and positive duties to uphold human dignity. This distinction tends to correspond to that between perfect and imperfect duties (Hill and Cureton 2018: 272). According to Kant, we have perfect duties to oneself (e.g., refraining from suicide) and others (e.g., refraining from defrauding them), as well as imperfect duties to oneself (e.g., cultivating one's human capacities) and others (e.g., helping those in need) (*G*, 4: 421–4, 429–30). While both duties arise from the same underpinning moral principle, perfect duties are 'unrelenting' because they require strict compliance, and imperfect duties are 'meritorious' because they can be achieved to greater and lesser degrees (4: 424). Perfect duties are typically, but perhaps not always,[10] negative. One must always refrain from lying and suicide. Kant treats imperfect duties as positive, namely one's own self-perfection and beneficence toward others (*MM*, 6: 419). When concerned with negative duties, conscience immediately knows what human dignity demands by recognition of acts that reason proscribes for their inherent wrongfulness toward humanity. When concerned with positive duties, however, the conscience would have to detect situations that prescribe active service to humanity. It would have to account for empirical circumstances in deciding when, how, and to what extent one can practicably perform which good deeds.[11] Positive duties, then, must be what necessitates equity's guidance within conscience as we strive to apply dignity-upholding principles optimally.

4. Equity as conscience's facilitator of positive duties

If conscience registers moral duties to uphold human dignity, those which bear a positive nature must be taken seriously, and, therefore, its judgements require facilitation from considerations of equity. While Kant often writes of conscience issuing prohibitions, his understanding of it must entail that it also compels acceptance and performance of positive duties. Positive duties necessarily entail latitude in deciding how to enact them. Rather than reducing them to merely prudential matters, however, this latitude renders equity necessary in Kantian morality because we are required, and are compelled by conscience, to take human dignity seriously. Our commitment to positive duties requires equitable judgements which enable us to enhance our performance of them in response to circumstances we encounter. Equity, therefore, is indispensable to Kantian morality.

4.1 Conscience registering positive duties

Consider the argument that Kant excludes positive duties from conscience's jurisdiction. Jens Timmermann, for example, claims that: 'In its capacity as a guide, [Kantian] conscience concerns itself solely with the *juridical permissibility* of a proposed action' (Timmermann 2016: 165). He bases this on passages where Kant writes of prohibitive judgements (e.g., 'with respect to the action I want to undertake I must ... be certain that it is not wrong' (quoting *R*, 6: 185–6)). Timmermann adds that

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'[t]his restriction of the scope of conscience tallies with the metaphor of conscience as a court of law', wherein 'violations of the demands of equity result in a bad or guilty conscience' (p. 166).

Recall, however, that the jurisdiction of the internal court of conscience, for Kant, is more expansive than that of a civil court. Timmerman misses the significance of how the equitable duties Kant writes about go beyond perfect duties, such as to not breach a contract (which would be tantamount to a lying promise). They concern the imperfect, positive, duties to approximate and then pay a circumstantially appropriate amount to another person. The internal court of conscience mandates that one do more than what can be externally compelled and often requires judgement about the appropriate measures to be taken through positive action. Kant's placement of positive duties within the internal court of conscience is underscored by philosophers who oppose this confinement. Patricia Smith, for example, argues that some positive duties *should* be justiciable, and 'challenge[s] [the] position' that such 'moral injunction[s] should be left to individual conscience' (Smith 1990: 20). Equity's unenforceability in civil courts, for Kant, leaves it nowhere to mandate positive duties but in conscience. Kant's internal court of conscience, in which equity operates, necessarily encompasses positive duties.

Commendably, Timmerman acknowledges in a footnote that, because the duty to advance the ends of others makes it wrong 'not to adopt a maxim of helpfulness', 'conscience may well, indirectly, have something to say about imperfect obligations after all' (2016: 165). For Kant, we must imagine the 'judge' in the 'court of conscience' as 'an ideal person' working '*within* the human being' who 'must also *impose all obligation*, that is … a person in relation to whom all duties whatsoever are to be regarded as also his commands …' (*MM*, 6: 439). The phrase '*all duties*' must encompass positive duties. Conscience would have to deliver an adverse judgement against one who avoids adopting, or acting upon, positive other-regarding maxims. It would then trigger the punishment of guilty moral feeling (6: 438–40).[12] Nussbaum writes, 'It is incoherent to salve one's conscience on the duties of material aid by thinking that these things are unnecessary for true flourishing while insisting so strictly on the absolute inviolability of duties of justice …' (Nussbaum 2001: 44). If she were wrong, it would have been strange for Kant to say: 'the maxim of common interest, of beneficence toward those in need, is a universal duty of human beings, just because they are … fellowmen, that is, rational beings with needs, united by nature in one dwelling place so that they can help one another' (6: 453). Conscience, for Kant, would instruct one to evaluate, equitably, how one might optimally serve the end status of others and oneself.

4.2 Equity guides conscience in implementing positive duties

Positive duties inherently require conscience to make imprecise evaluations about how one might fittingly uphold human dignity in particular circumstances. The 'laws', or moral principles, deriving from the overarching moral law of human dignity, here, therefore, necessitate equity to guide their application through conscience. Kant writes:

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> [F]or if the law can prescribe only the maxim of actions, not actions themselves, this is a sign that it leaves a playroom (*latitude*) for free choice in following (complying with) the law, that is, that the law cannot specify precisely in what way one is to act and how much one is to do by the action for an end that is also a duty. (*MM*, 6: 390)

This does not make all such choices equally good. In choosing one's actions, one must do more than simply decide whether the action is forbidden or not. One must try to approximate the best action to be undertaken, in the best measure, within given circumstances. Simultaneously, the characteristic imperfection of positive duties does not change their nature as duties:

> But a wide duty is not to be taken as permission to make exceptions to the maxim of actions but only as a permission to limit one maxim of duty by another (e.g., love of one's neighbor in general by love of one's parents), by which in fact the field for practice of virtue is widened. – The wider the duty, therefore, the more imperfect is a man's obligation to action; as he, nevertheless, brings closer to *narrow* duty (duties of right) the maxim of complying with wide duty (in his disposition), so much the more perfect is his virtuous action. (*MM*, 6: 390)

Conscience, then, commands the intellectual labour of judging to determine how moral principles can best be applied in positive action to circumstances, with the underpinning value of the persons as moral ends – human dignity – in mind. That kind of judgement is, in a word, equitable.

The inclusion of positive duties within Kant's conscience-governed Doctrine of Virtue presents tensions between duties which highlight the need for equity. This is underpinned by commitment to the human dignity of oneself and others:

> In accordance with this principle a human being is an end for himself as well as for others, and it is not enough that he is not authorized to use either himself or others merely as a means (since he could still be indifferent to them); it is in itself a duty to make man as such his end. (*MM*, 6: 395)

Kant divides the Doctrine of Virtue into two general categories of duties: to strive toward one's own 'perfection', and the 'happiness' of others (*MM*, 6: 386). 'Happiness' as Kant used the term includes not only 'enjoyment' but also 'well-being' (*CJ*, 5: 443). Each specific positive and negative duty embodies a moral principle (such as beneficence, respect, gratitude, conscientiousness, truthfulness, self-esteem, moderation) underpinned by human dignity. Given that these duties tend to be positive and imperfect, their latitude 'unavoidably leads to questions that call upon judgment to decide how a maxim is always to be applied in particular cases, and indeed in such a way that judgment provides another (subordinate) maxim' (*MM*, 6: 411). To ensure that an application of moral principles serves dignity effectively, and does not unintendedly undermine it, conscience must exercise equitable, that is particularized, moral judgement in managing tensions between competing moral pursuits.

Other-regarding and self-regarding duties fetter the extent to which one should pursue aims concerning each in accordance with the other. For instance, conscience

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registers a duty to help the less fortunate but giving too much can leave insufficient resources for self-regarding duty to one's material being, which must be upheld for the facilitation of one's moral betterment (*MM*, 6: 454). Moreover, tensions arise even within specific categories of other-regarding and self-regarding duty, as signalled in the previous paragraph (6: 390; Gregor 1963: 167–8). One's duty to cultivate attention to conscience is greater than that to promote one's other natural capacities ('i.e. in acquiring knowledge or skill') (6: 391–4). Still, Kant counsels us to prioritise competing talents in accordance with 'the different situations' in which we find ourselves (6: 393). He would discourage spending so much time studying ethics that one neglects their physical capacities. Many moral duties which, for Kant, must be upheld only through the individual's conscience require equitable judgements ultimately aimed at serving humanity.

4.3 Not mere prudence

Such judgements are not *merely* of prudence. Rather, equity directs the exercise of prudence toward moral ends. For Kant, judgement is the faculty through which we recognize, organize, and synthesize representations of objects in our minds (*CPR*, A69/B94). It is exercised well through the 'skill' of 'prudence' when seeking a merely desired outcome such as one's own happiness (*G*, 4: 415–6). Imagine Gary seeing some objects and judging that they are fruits, specifically apples, from their representations to his senses. He then applies mathematical concepts to his empirical observations to judge how many there are, and then to prior experience, in judging whether they are enough to make a self-satisfying pie. He prudently exercises judgement aimed at self-interest. Prudence itself, in this scenario, does not concern moral judgement.

Prudence can be undertaken *equitably* when seeking to exercise optimal judgement, considering the relevant circumstances, for serving a *moral* end. Envision Gary counting the apples, planning to make a large enough pie for a gathering of his friends and give each a generous share. He chooses apple pie rather than cocktails to include friends who do not drink. He accounts for friends who would welcome a second helping. If he did this because he cares about his friends (*MM*, 6: 451–2), he served a moral end. He has not acted *merely* prudently. Like the employer who raises her worker's payment to counter inflation, albeit with less exigency, he applied prudence pursuant to the equity informing his judgement. Granted, in good conscience, he could choose different ways in which to express friendship. Surely, however, conscience would censure him if he treated 'friends' merely prudentially by showing kindness only with a view to maximizing their usefulness to him. Rather, he should treat them as ends whose happiness is important and act kindly toward them, equitably, considering relevant circumstances. Prudence cannot render equity redundant. Moral judgements made through equity, rather, incorporate the use of prudence toward moral ends.

One could be forgiven for overlooking equity for prudence. In a footnote, Kant writes that the 'latitude in [the] application' of imperfect duties of virtue, like candour (active truth-telling), means that:

> judgment can decide what is to be done only in accordance with rules of prudence (pragmatic rules), not in accordance with rules of morality (moral

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> rules). [W]hat is to be done cannot be decided after the manner of *narrow* duty . . . but after the manner of *wide* duty . . . Hence one who complies with basic principles of virtue can . . . commit a *fault (peccatum)* in putting these principles into practice, by doing more or less than what prudence prescribes. But insofar as he adheres strictly to these basic principles he cannot practice a *vice* . . . (*MM*, 6: 433)

In the first sentence of this quotation, Kant seems to crash into contradiction. How could a virtue of positive duty exist and yet be exempt from the moral law, and thus be left to mere judgements of prudence?

The footnote is only reconcilable with its context if 'the *rules* of morality' in its first sentence refers to the proscriptive rules governing negative duties and 'the rules of prudence' refers to *equitably* informed prudence as they are applied toward moral ends. As Roger Sullivan argues, the moral law, in the sphere of positive duties, is 'indeterminate in what it requires' and consequently, 'needs substantial *supplementing* by the principle of prudence' (Sullivan 1997: 466). The rules of morality tell one to make 'man as such his end', and one must apply rules of prudence to determine how to best go about serving that end in our empirical world. While such prudence leaves room to factor in regard for one's own happiness, one's conscience would rule against a pattern of conduct that minimises positive action in service of humanity in the name of prudentially pursued happiness. Surely, it would undermine the moral law to 'supplement' it with a license to characteristically apply its positive provisions in a manner that persistently privileges self-serving prudence. The ease with which one could invoke 'prudence' to excuse a minimalist approach to performing positive duties demonstrates why Kant's moral system depends on equity. Otherwise, the moral law would suffer a loophole that confers moral legitimacy upon the conduct of those who deceive themselves into believing their parsimonious efforts are satisfactory. The prudence Kant advocates in determining how to carry out positive duties must be guided through 'equity': the 'divinity' he recognized within the court of conscience in the early pages of the *Metaphysics of Morals*.

A merely prudential attitude to performing positive duties would be unconscientious. This is not least because such would be insufficient in relation to the duty of self-perfection which follows the duty to be one's own innate judge (including to 'cultivate one's conscience') (*MM*, 6: 401, 438–40). That, in turn, corresponds with strengthening commitment to one's duty to benefit others, as illustrated in the following paragraph. To advocate for an 'unrevised prudential latitude', as Mavis Biss holds, would rely 'on an understanding of virtue and the fulfilment of imperfect duties that is incompatible with Kant's conception of moral improvement' (Biss 2015: 626–7). She reasons that 'an agent may exercise the strength necessary to avoid violating her perfect duties and yet still not fully realize her freedom, for the duty of moral self-perfection requires more than resisting temptations to vice' (p. 610). This must be correct because conscience registers duties, including positive duties, deriving from the moral law under which persons constitute moral ends, and, in turn, requires us to enhance both our sensitivity to these duties and the soundness of our implementation of them. While emphasising the purity of moral laws themselves, Kant explained that they 'still require a power of judgment sharpened by experience' (*G*, 4: 389). Such judgement, as we pursue positive duties, entails equity in applying

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principles to the circumstances and mindful implementation of prudential learning based on experience. In other words, positive duties can be seriously upheld, not through mere prudence, but only by conscience engaging equity to assist in circumstantial moral judgement, which enlists prudence in support of moral ends.

Consider an example. Conscience can instruct Maria, out of 'candour' and beneficence toward Saul's future wellbeing, to encourage him to reconsider his drastic hairstyle (*MM*, 6: 433). Ideally, her conscience will be informed with equity, instructing her to balance candour with a degree of 'reticence' (ibid.), which entails deploying prudence toward a moral end. Instead of saying that Saul resembles Sonic the Hedgehog, she might suggest he adopt a conventional aesthetic until he firmly establishes his career. If she said the former with caring intentions, but evoked a tearful response, Kant would say her judgement was 'faulty' though she committed no 'vice' (ibid.). Surely, however, vice would occur if she were to take the latitudinous nature of the kind of judgement she is making as licence to give ostensibly beneficent advice without regard for the feelings or self-esteem of the recipient. A poor excuse for 'candour' would hardly serve the advisee's end-status. Rather, following reflection, Maria's conscience should, in future, enable her to deliver better judgements in equitably managing the tension between competing needs for candour and reticence with the benefit of experience as she evaluates circumstances in similar situations. The equity guiding her conscience will encourage her to consider the characteristics and circumstances of the individual whom she advises, mindful of the need to counterbalance her tendency of forthrightness with tact. The skill of prudence, through which she judges how to bring about the desired outcome, will then be used in a manner which is equitable in carrying out her positive duties, to favour both parties' respective moral end-statuses: hers by striving toward self-perfection and the other's by promoting their wellbeing.

The undertaking of Kant's unfinished business of analysing equity under the rubric of virtue has thus begun. We understand that, for Kant, equity should not be coerced. We should act virtuously of our own accord and strive toward perfection as we exercise our consciences equitably in carrying out our positive and imperfect duties. To treat humanity 'in a manner appropriate to [our] dignity', Kant writes, means recognizing that it is '*more than a machine*' (*WIE*, 54). He therefore implores us to pursue 'Enlightenment'. That is, to overcome '*self-incurred immaturity*' and have the 'courage to use your *own* understanding', instead of appointing someone to 'have a conscience for [you]' (*WIE*, 60). The corollary is to engage conscience equitably in one's efforts to serve the end of human dignity as well as one can. Prudence alone is inadequate because we are not merely seeking to advance our own happiness. The place of equity, for Kant, as a vital assistant for conscience in its dignity-serving endeavour, is thus established. It remains to be illustrated where its necessity is most pronounced.

5. Illustration

Our illustration focuses on the equity involved in the work of conscience to simultaneously uphold *one's own* dignity and serve *that of others* in interpersonal dealings. Previous illustrations showed equity's enablement of conscience to benefit human ends of others where no such struggle came into the foreground. Now we turn

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to the tension between the positive other-regarding duty to advance the ends of others through beneficence and the duty to maintain self-esteem and avoid servility. This is examined first more generally, and then more specifically in the context of Kant's example of business partners facing the positive call of conscience to pay another beyond the agreed amount.[13]

5.1 Equity in interpersonal interactions

Equity demands discernment about how to appropriately conduct oneself given the circumstances, especially when challenges arise, in relation to those with whom we interact. Aristotle's interpersonal thought about equity (2004: 1143b) assists in conceiving equity's place within Kant's courtroom of conscience:

> [W]e attribute discernment, judgement, practical wisdom, and intellect to the same people, saying that they are practically wise and have judgement. For all these capacities are to do with the last things – particular things – and being a person of judgment, a person of sound discernment ... consists in the capacity to judge in those matters that are of concern to the practically wise person. *For what is equitable is the common concern of all good people in their relations with others.*[14]

If human dignity is the end we must uphold in our dealings with others, we should undertake a good faith exercise of informing our consciences equitably so that our judgements will enable conduct which, in each situation, applies the moral principles favourably to the end-statuses of both parties. This can be challenging.

Conscience must undertake equitable exercises of judgement to manage the tension between our duty to serve human dignity through the principle of beneficence toward others and our duty to avoid undermining it by violating the principle of self-esteem and reducing oneself to servility. 'Beneficence' concerns one's positive duty to 'the happiness of *other* human beings, *whose* (permitted) *end I thus make my own end as well*' and entails an indeterminate degree of 'sacrifice of a part of [one's own] welfare' (*MM*, 6: 388, 393). Kant recognizes that:

> [while] how far it should extend depends, in large part, on what each person's true needs are in view of his sensibilities[,] a maxim of promoting others' happiness at the sacrifice of one's own happiness, one's true needs, would conflict with itself if it were made a universal law. Hence the duty is only a *wide* one; the duty has in it a latitude for doing more or less, and no specific limits can be assigned to what should be done. The law holds only for maxims, not for determinate actions. (*MM*, 6: 693)

The moral law informs its maxims rather than prescribing determinate actions. In applying the maxims to specific situations, equitably, with respect for their basis in the moral law, we uphold the law and its fundamental commitment to human dignity. In so doing, one must have regard for one's own 'dignity (an absolute inner worth) by which he exacts *respect* for himself from all other rational beings' (*MM*, 6: 435). The vice of 'servility' is committed when one waives 'any claim to moral worth in oneself'

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or disavows one's self-regarding duty of maintaining the 'self-esteem' owed to a '*rational human being*' (ibid.). Conscience, therefore, operates equitably to account for the circumstances concerning the other's characteristics and needs as well as one's own, to simultaneously honour the human dignity of both parties.

An equitable mentality is needed in various kinds of interpersonal dealings: with family, friends, intimate partners, in workplaces, in business, and with strangers. In each context, Kant's instruction is equitable in counterbalancing the instruction to be kind to others with advice such as 'Be no man's lackey' and 'Do not let others tread with impunity on your rights' (*MM*, 6: 436). A television series called *The Good Place* introduced a character named Doug Forcett who demonstrates the impossibility of perfecting imperfect positive duties. Doug illustrates the problem of dignity with any moral system which neglects equity in this regard through his commitment to beneficence at the extravagant expense of self-respect. He would, for instance, be ordered to routinely do his neighbour's laundry and perform degrading acts for the latter's entertainment.[15] Such an extreme example underscores how the inequity or relentless service to the ends of others can lead one to mistake conscience as 'lord[ing] over us as a tyrant' (*LE*, 134) and treat oneself as a mere means rather than an end.

Our consciences might encounter more challenging cases, however, concerning people who need help but display problematic attitudes. Consider a duty to support a relative who experienced a series of misfortunes. Benevolence, for Kant, extends to a duty of 'sympathy' (*MM*, 6: 465–7). If the relative persistently wallowed in misery and became demanding, one would not act consistently with either person's end-status by indulging this behaviour. One reduces oneself to a mere means by tending to another's every whim, while enabling the other's self-destruction. Kant would call this '*pity*' which 'has no place in people's relations with one another' (6: 457). He would nonetheless insist that one's human dignity is inconsistent with the 'supposition that he could never be improved' and encourage us to sensitively help them 'uncover' their self-deception (unless they proved incorrigible) (6: 464–5). Kant's positive other-regarding duties can only be applied equitably, though conscience might find this more or less challenging from case to case, as we aim to harmonize the promotion of the ends of others with respect for our own.

5.2 Applied to partnership example

Kant's own examples of equity providing unenforceable rights, which translate into virtues compellable only by conscience, also reveal a positive duty to determine how one should go about acting beneficently toward others consistently with one's own self-worth. This conscientious process, which Kant would encourage as a matter of virtue, evokes Aristotle's 'equitable person' who 'does not stand on his rights in a bad way, but tends to accept less than his share, though he has the law on his side (Aristotle 2004: 1137b–1138a). Accepting 'less' in Kant's examples would mean giving another more than one can be coerced to give. Although Kant wrote that one who brings an equitable claim is not '*merely*' asking for beneficence, and indeed the claimant has a moral 'right' to insist, the defendant's immunity from judicial enforcement leaves the claimant at the mercy of his beneficence.

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The objectivity of the duty to treat people equitably follows the premise of human dignity which informs conscience. We know that we should engage equity in seeking instruction on what we should do which must be informed by the relevant circumstances. The subjective element concerns our necessarily imprecise evaluation of how to act based on those circumstances. Business partners who ultimately contributed less than the other to their venture, as conscience-bearers, know their duty to the latter as a moral end to consider some kind of adjustment. Otherwise, some would receive proportionately more than their contribution while another receives proportionately less than theirs. To let this stand would be to passively retain a benefit generated by the other as a means without seriously regarding them simultaneously as an end. Their internal court of conscience should be guided by equity which will enable them to balance commitments to their own end-status with commitments to that of their partner.

One might start with the thought that they are within their rights to not pay anyone more than agreed, which follows their freedom as bearers of human dignity. Yet in present circumstances, one's conscience conveys that the other party's dignity requires beneficent adjustment, unless the partners have an established practice whereby partners take turns making greater contributions when they can.[16] They should then estimate an adjustment that would adequately account for the other partner's greater contribution without making an undignified self-sacrifice. It may be impossible to precisely calculate how much work one partner contributed beyond the others and the extent of all offsetting factors. The court of conscience demands an equitable adjustment, however, which may slightly favour the other party.

One should be cautious not to adopt a 'tormenting conscience' like Doug and drastically overcompensate the other party (*LE*, 134). We can appreciate in this business context that one could ultimately self-sacrifice to the point of undermining one's end status by going to extremes to advance the ends of others. One would attract a reputation as a 'pushover' of whom advantage can easily be taken. While the calculation should be made as prudently as one can make it in relation to the relevant proportions of contribution, this must be done equitably with the dignity of all parties in mind. Carrying out the imprecisely measurable practice of benevolence will in any case strengthen one's inclination to continue doing so (*MM*, 6: 401), thereby upholding the self-regarding duties to 'obtain a hearing for conscience' (6: 402), while maintaining self-respect (6: 435). Exercising conscience equitably in seeking to advance the ends of others through benevolence consistently with one's own end-status, for Kant, serves the dignity of the humanity of both parties. The process is one through which the court of conscience delivers an equitable judgement, without which one would undermine the fundamental law which underpins the self-regarding and other-regarding duties.

It would be impossible, under the Kantian understanding, to commit to our positive moral duties without equity. This is apparent in our interpersonal dealings like those adduced in the previous section where we consider how to treat others. It is pronounced most starkly when the tension arises between one's own moral end-status and that of someone else. Thus, the voice of the 'divinity', 'who cannot be heard' in a civil court, speaks to the individual's conscience. It is muffled when one falls short in the responsibility to duly engage conscience in pursuit of the duty to promote the substance of the moral law, namely, the dignity of humanity.

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6. Conclusion

Equity is indispensable within Kantian morality. Kant did not adequately explain this despite having at least in effect recognized the legally unenforceable demands of equity, as grounded in human dignity, playing a crucial role in informing human conscience. Scholars of his work have not made the question of equity within Kant's views regarding moral Virtue, as opposed to the question of legal Right, a matter for sustained focus. An enquiry is thus needed into whether this notion indeed does play such a crucial role in Kant's moral philosophy. This article undertook that task. The demand of conscience to uphold the end of human dignity, for Kant, includes not only avoiding inherently dignity-violating acts but also positive dignity-serving action. Duties regarding the latter require engagement with questions of equity – not merely prudence – to enable particularized application of principles with a view to better upholding the underpinning moral law of human dignity. The general issue was illustrated through situations in which one's conscience is informed by equity in the interest of acting beneficently toward others without becoming servile or sacrificing self-esteem, simultaneously upholding the end-status of both parties. Kant's business partnership scenario gave one such example of how he envisioned conscience taking guidance from equity in a moral system that would be incomplete without recognition of the need for such guidance.

Acknowledgements. The author wishes to acknowledge the anonymous reviewers and editor for their helpful comments. He thanks Dr Gabriela Hernandez and Dr Iain MacKenzie for encouraging his work on the article, as well as the members of the University of Kent Philosophy Reading Group for providing a space for him to explore and present his earlier thoughts about the work of Immanuel Kant.

Notes

1 In the original German (*Metaphysik der Sitten*), Kant uses the term *Billigkeit*, alongside the bracketed *aequitas*, which the English versions have translated into 'equity'.

2 The following abbreviations are used in reference to Kant's works, the cited editions and translations of which can be found in the reference list: *G* = *Groundwork of the Metaphysics of Morals*; *MM* = *Metaphysics of Morals*; *CPrR* = *Critique of Practical Reason*; *LE* = *Lectures on Ethics*; *On a Supposed Right to Lie Because of Philanthropic Concerns* = *RTL*; *Critique of Pure Reason* = *CPR*; *Critique of Judgement* = *CJ*; *Religion Within the Boundaries of Pure Reason* = *R*; 'What is Enlightenment?' = *WIE*.

3 Kantian imperfect duties are analysed by others without consideration of how they necessitate equity. See Herman (1993), Sullivan (1997), Biss (2015), Yudanin (2018).

4 Examples can be viewed in contexts of recent controversies. Imane Khelif, the Olympic gold-medallist boxer, has responded to ill-informed accusations about her gender and sex as 'harm[ful] to human dignity' (Associated Press 2024). Australian Senator, Fatima Payman, has invoked conscience in the context of her departure from the Australian Labor Party (Tsikas 2024). Attacks labelling Kamala Harris as a '[Diversity, Equity, and Inclusion] hire' have been called out for 'bigotry' (Obeidallah 2024).

5 The paper focuses on the 'equity' Kant recognises as operating within the individual's 'court of conscience'. Others will follow, as parts of a larger project, concerning how justiciable and collective notions of equity might operate consistently with his work. Kantian Right need not exclude every legal doctrine which others would label as equitable even if Kant did not conceive them as such. Wisner (1993), e.g., argued that the doctrine of 'unconscionability', recognized as 'equitable' within Anglo-American legal systems, could be legitimately applied within Kantian Right. Kant might also accommodate a public authority enacting equitable provisions to implement the collective, general, will (see *MM*, 6: 256).

6 As Nebel (2023: 26) wrote, citing Gallie (1955–1956): '*Concepts* are abstract notions like justice and goodness, but people disagree about what justice requires and what constitutes goodness. [P]eople have different *conceptions* of those ideals.'

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7 Kant counsels against allowing '*nothing to be morally indifferent*', such as 'whether I … drink beer or wine, supposing that both agree with me' (*MM*, 6: 409).
8 See, however, Makkreel (2002; 216) for the view that Kantian conscience 'is really the consciousness of whether we have paid heed to our moral feeling in performing our duties'.
9 For Kant, 'an erring conscience is an absurdity' (*MM*, 6: 401). One who acts according to conscience, while labouring under an honest mistake of principle or fact, fulfils their duty on that occasion. The duty remains, however, to pursue moral perfection by advancing their moral education and knowledge generally.
10 Kant implies that some positive duties can become perfect. For example, a rich person *must* give charity. He 'should hardly even regard beneficence as a meritorious duty on his part' because 'it costs him no sacrifice' (*MM*, 6: 453). Yet surely Kant would recognize some degree of imperfection to this duty. A wealthy individual could realise the possibility of donating oneself into destitution (*MM*, 6: 454).
11 Further to the above endnote, though, a positive duty could arise in instances where a minimum requirement should be obvious, e.g., where one could save a drowning person without risking one's own life.
12 In the *Metaphysics of Morals*, Kant professes that verdicts of conscience are essentially punitive rather than rewarding, and that the 'happiness' following an acquittal is really 'relief from preceding anxiety' (6: 438–40). In posthumously published notes, however, Kant writes: '… conscience rewards everything good and punishes everything evil, but in different degrees' (*Reflections*, Refl. 7183: 19: 266; quoted in Kant 2021).
13 Further work will follow to consider how, under similar logic, equity must be needed in guiding conscience when we work collectively to advance positive duties, e.g., to combat poverty.
14 One might question the merit of invoking Aristotle to assist in understanding Kant's view of equity. Aristotle (2004 1138a), unlike Kant, viewed equity as justiciable. Yet as the quotation preceding this note shows, Aristotle's understanding of equity includes a conception which informs interpersonal dealings, and therefore positive duties.
15 *The Good Place*, NBC (2016), Season 3, Episode 8.
16 Kant would advise parties to provide for conceivable contingencies in advance, and in that sense, contract on equitable terms (*MM*, 6: 228–300).

References

Aristotle (1909) *The Art of Rhetoric*. Trans. Richard Claverhouse Jebb. Cambridge: Cambridge University Press.
Aristotle (2004) *Nicomachean Ethics*. Trans. Roger Crisp. Cambridge: Cambridge University Press.
—— (2007) *On Rhetoric*. Trans. George A Kennedy. Oxford: Oxford University Press.
Associated Press (2024) 'Olympic Boxer Imane Khelif says the Backlash she's Faced over Misconceptions about her Gender "Harms Human Dignity"', *Toronto Star*, 4 August. Available at: https://www.thestar.com/sports/olympics-and-paralympics/olympic-boxer-imane-khelif-says-the-backlash-shes-faced-over-misconceptions-about-her-gender-harms/article_f9858a00-0395-531f-a5de-286fde14122b.html/ (Accessed 03 September 2024).
Bennington, G. (2011) 'Kant's open secret'. *Theory, Culture & Society*, 00(7–8), 26–40.
Biss, M. (2015) 'Avoiding vice and pursuing virtue: Kant on perfect duties and "prudential latitude"'. *Pacific Philosophical Quarterly*, 98(4), 618–635.
Brown, S. (1962) 'Has Kant a philosophy of law?'. *Philosophical Review*, 71(1), 33–48.
Fisette, J. (2022) 'At the bar of conscience: a Kantian argument for slavery reparations'. *Philosophy and Social Criticism*, 48(5), 674–702.
Frederickson, H. G. (2010) *Social Equity and Public Administration*. New York: Routledge.
Gallie, W. B. (1955-1956) 'Essentially contested concepts'. *Proceedings of the Aristotelian Society*, 56, 167–198.
Gregor, M. (1963) *Laws of Freedom*. New York: Barnes and Noble.
—— (1993) 'Kant on obligation, rights and virtue'. *Jahrbuch fur Recht und Ethik*, 1, 69–102.
Guyer, P. (2002) 'The derivation of the Categorical Imperative: Kant's correction for a fatal flaw'. *The Harvard Review of Philosophy*, 10(1), 64–80.
Herman, B. (1993) *The Practice of Moral Judgment*. Cambridge, MA: Harvard University Press.

https://doi.org/10.1017/S1369415425000160 Published online by Cambridge University Press

Heydon, J. D., Leeming, M. J., and Turner, P. G. (2014). *Meagher, Gummow & Lehane's Equity: Doctrines & Remedies*. 5th ed. Sydney: LexisNexis.
Hill, T. E. and Cureton, A. (2018) 'Kant on virtue'. In N. Snow (ed.), *The Oxford Handbook of Virtue* (Oxford: Oxford University Press), pp. 263–280.
Howard, J. (2004) 'Kant and moral imputation: conscience and the riddle of the given'. *American Catholic Philosophical Quarterly*, 78(4), 609–627.
Kant, I. (1930) *Lectures on Ethics*. Trans. Louis Infield. London: Methuen & Co.
—— (1970) 'An Answer to the Question: "What is Enlightenment?"'. In Hans Reiss (ed.), *Kant: Political Writings* (Cambridge: Cambridge University Press), pp. 54–61.
—— (1987) *Critique of Judgment*. Trans. W. S. Pluhar. Cambridge, MA: Hacket Publishing.
—— (1993) *On a Supposed Right to Lie Because of Philanthropic Concerns*. Trans. J. W. Ellington. Cambridge, MA: Hackett Publishing.
—— (1997) *Metaphysics of Morals*. Ed. and trans. M. Gregor. Cambridge: Cambridge University Press.
—— (1998) *The Critique of Pure Reason*. Trans. and ed. P. Guyer and A. Wood Cambridge: Cambridge University Press.
—— (2012) *Groundwork of the Metaphysics of Morals*. Eds. and trans. M. Gregor and J. Timmermann. Cambridge: Cambridge University Press.
—— (2015) *Critique of Practical Reason*, Ed. and trans. M. Gregor. Cambridge: Cambridge University Press.
—— (2021) 'Reflections'. In J. Wuerth (ed.), *The Cambridge Kant Lexicon* (Cambridge: Cambridge University Press) pp. 374–377.
—— (1991) *Religion Within the Boundaries of Pure Reason*. Ed. P. Guyer and A. Wood. Cambridge: Cambridge University Press.
Kazim, E. (2017) *Kant on Conscience: A Unified Approach to Moral Self-Consciousness*. Leiden: Brill.
Kerstein, S. J. (2008) 'Treating oneself merely as a means'. In M. Betzler (ed.), *Kant's Ethics of Virtue* (Berlin: De Gruyter), pp. 201–208.
Kessler, G. (2024) 'Justice, equity, dignity'. *Nashim: A Journal of Jewish Women's Studies & Gender Issues*, 43, 143–155.
Kohlers, A. (2016) *A Moral Theory of Solidarity*. Oxford: Oxford University Press.
Madden, R. (2024) 'A Dignity Theory of Equity'. PhD dissertation: University of Kent.
Makkreel, R. A. (2002) 'Reflective judgment and the problem of assessing virtue in Kant'. *Journal of Value Inquiry*, 36, 205–220.
Nebel, J. (2023) 'Does Dworkin's moral reading rest on a mistake?'. *Journal of Jurisprudence*, 17, 25–40.
Nussbaum, M. C. (1993) 'Equity and mercy'. *Philosophy & Public Affairs*, 22(2), 83–125.
—— (2001) 'Duties of justice, duties of material aid: Cicero's problematic legacy'. *Bulletin of the American Academy of Arts and Sciences*, 3, 38–52.
O'Neill, O. (2018) *From Principles to Practice: Normativity and Judgement in Ethics and Politics*. Cambridge: Cambridge University Press.
Obeidallah, D. (2024) 'Calling Kamala Harris a 'DEI hire' is what bigotry looks like', *CNN Opinion*, 7 July. Available at: https://edition.cnn.com/2024/07/07/opinions/kamala-harris-dei-hire-racism-2024-obeidallah/index.html (Accessed 03 September 2024).
Pinheiro Walla, A. (2020) 'A Kantian foundation for welfare rights'. *Jurisprudence*, 11(1), 76–91.
Ripstein, A. (2004) 'Authority and coercion'. *Philosophy & Public Affairs*, 32(1), 2–35.
Rosen, A. (1993) *Kant's Theory of Justice*. Ithaca, NY: Cornell University Press.
Rudolph, D. (2023) 'Dignity and the promise of conscience'. *Cleveland State Law Review*, 71(2), 305.
Shanske, D. (2005) 'Four theses: preliminary to an appeal to equity'. *Stanford Law Review*, 57(6), 2053–2085.
Shell, S. M. (2003) 'Kant on human dignity'. In R. Kraynak and G. Tinder (eds.), *In Defense of Human Dignity: Essays for Our Times* (Notre Dame, IN: University of Notre Dame Press), pp. 53–80.
Singer, M. G. (1954) 'The Categorical Imperative'. *Philosophical Review*, 63(4), 577–591.
Smith, P. (1990) 'The duty to rescue and the slippery slope problem'. *Social Theory and Practice*, 16(2), 19–41.
Sullivan, R. J. (1997) 'The positive role of prudence in the virtuous life'. *Jahrbuch für Recht und Ethik*, 5, 461–470.
Timmermann, J. (2016) '*Quod dubitas, ne feceris* – Kant on using conscience as a guide'. *Studi Kantiani*, 29, 163–168.

https://doi.org/10.1017/S1369415425000160 Published online by Cambridge University Press

Tsikas, M. (2024). 'Fatima Payman quits Labor with a "heavy heart but a clear conscience"'. *The Guardian*, 4 July. Available at: https://theconversation.com/fatima-payman-quits-labor-with-heavy-heart-but-a-clear-conscience-233981 (Accessed 03 September 2024).
Vujošević, M. (2014) 'The judge in the mirror: Kant on conscience'. *Kantian Review*, 19(3), 449–474.
Wisner, R. (1993) 'Understanding unconscionability: an essay on Kant's legal theory'. *University of Toronto Law Review*, 51, 396–448.
Wood, A. (2008) *Kantian Ethics*. Cambridge: Cambridge University Press.
Yudanin, M. (2018) 'Can positive duties be derived from Kant's Categorical Imperative?'. *Ethical Theory and Moral Practice*, 18, 595–614.
Zreik, R. (2023) *Kant's Struggle for Autonomy*. Lanham, MD: Rowman & Littlefield.

Cite this article: Madden, R. (2025). Equity in Kantian Morality: Unmuting the 'Divinity Who Cannot Be Heard'. *Kantian Review* **30**, 387–409. https://doi.org/10.1017/S1369415425000160

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