Nussbaum, Kant and Conflicts Between Duties

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The question of the possibility of conflict between duties can take different forms. It can take an interpersonal form, where the question is whether it is possible for one person's duty to be in conflict with the duty of someone else. A standard case is of the guard at a prisoner of war camp, whose duty—to prevent the prisoners escaping—is in apparently direct conflict with the prisoners' duty to escape. There are interesting issues there, but I shall not explore them in this paper. Instead I want to concentrate my discussion on the possibility of conflicts of duties *within the consciousness of the individual moral agent*. The issue I want to examine is whether it is possible for a moral agent to be confronted by two incompatible duties, each of which he is separately bound to carry out, such that, no matter which he does, he is morally blameworthy for failing to do the other.

Martha Nussbaum is one philosopher to have argued that this *is* possible. In her book *The Fragility of Goodness* she set out to trace the tension in ancient Greek thought between the belief that human goodness, in order to be worthy of praise, must lie within human control, and the contrasting belief that it is—like a plant—dependent upon a nurturing environment, vulnerable to external happenings, crucially dependent upon luck. In discussing the element of luck she cites the case of a moral agent, such as Agamemnon at Aulis, who is confronted (through no fault of his own) with a tragic conflict between duties: in his case, his duty as leader of the Greek forces to sacrifice his daughter Iphigenia to secure a favourable wind for the ships and his duty as father to protect and cherish his innocent daughter. Faced by such a conflict of duties, Nussbaum says, one is forced to do a wrong action, knowing it to be a wrong action, because the circumstances (the element of ill luck or unhappy fate) do not permit the fulfilment of two valid, but contingently conflicting moral claims.

She acknowledges that most modern commentators have tended to see the dramatist's representation of Agamemnon's dilemma as involving a contradiction rather than as a genuine moral predicament—or as involving at most (in the language of Ross) a conflict between mere *prima facie* duties. But she argues that Greek thought,

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in accepting the risk of tragic conflicts between duties as a fact of practical life, is closer to our own ordinary, partially reflective, view of morality, than are the views of moral philosophers who deny that such conflicts can occur. Among these philosophers she includes Kant.

Her account of the reasons why Kant thinks that such conflicts of duty cannot occur ('a conflict of duties and obligations is inconceivable'[1]) is not particularly clear. She says in one place, ostensibly paraphrasing Kant, that

> 'the accidents of step-motherly nature' should not disturb the deliberations of the rational agent. The internal harmony and self-respect of the morally good person ... cannot be affected by mere happenings in the world.[2]

Elsewhere she says that for Kant

> it is part of the very notion of a moral rule or principle that it can never conflict with another moral rule ... the very concepts of duty and practical law rule out inconsistency.[3]

These seem rather different points. The first of them I have some difficulty in understanding, at least in understanding as a view attributable to Kant. What Kant says (in the *Groundwork*) is that a *good will* is not subject to the accidents of a step-motherly nature.[4] A good will is related to, but clearly is not identical with, 'the deliberations of the rational agent'. How our 'internal harmony' and 'self-respect' could be unaffected by 'happenings in the world' is mysterious to say the least. And the description of them as '*mere* happenings' oversimplifies (and, I would say, caricatures) Kant's subtle appreciation of the relevance of facts about the world and about human beings to our moral situation.

She is on stronger ground in saying that for Kant the very concepts of duty and practical law rule out inconsistency. But in leaving it at that, she makes it sound as if this is just a stipulative definition on Kant's part, and that it would be open to some other philosopher to use the concepts of duty and practical law in a way which did not rule out inconsistency. Whereas, of course, Kant's finding conflict or inconsistency within morality inconceivable is, in part at least, a consequence of his view that the moral law is the expression of reason

[1] *The Metaphysic of Morals*, trans. M. Gregor (Cambridge, 1996), p. 16.
[2] *Fragility and Goodness* (Cambridge, 1986), p. 49.
[3] Ibid., p. 31.
[4] *The Moral Law* (Kant's *Groundwork of the Metaphysic of Morals*, trans. H. J. Paton) (London, 1948), p. 62.

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in its practical employment. It is as an expression of pure practical reason that the moral law cannot contradict or be inconsistent with itself.

However, in stressing that for Kant the rules or principles of morality must be consistent in every situation and form a harmonious system, Professor Nussbaum overlooks the point that such consistency or harmony is, in Kantian terms, a regulative idea or idea of reason. It is not simply a given. It is something that as rational beings we are committed to looking for in the moral law—something in the absence of which we can never rest content that we have adequately determined it. Yet at the same time we cannot know that the realization of such consistency or harmony is feasible in the world in which we live. Whether it is feasible or not in our lives is something to be explored by reason in its practical employment. Its feasibility cannot be theoretically proved or disproved in advance. And even the difficulties of achieving consistency in practice are not, and can never be, for Kant conclusive proof against its feasibility.

There are two points worth adding to this. First, the achievement of consistency as such in one's moral principles is not for Kant sufficient ground to hold that those moral principles are correct. Consistency may have been achieved at the expense of *adequacy*: the ability of the principles to take account of important aspects of our experience as human beings in the world. Secondly, the moral agent confronted by an inconsistency between his moral principles is required to take it seriously, as a challenge to the 'reflective equilibrium' (if I may borrow Rawls' phrase) hitherto achieved. Inconsistency is a scandal for practical reason which he must devote all his resources of moral reflection to overcome. It is not what Professor Nussbaum represents it as being for the Kantian moral agent, a mere illusion, which is dispelled when he decides which of the moral principles is the one he ought to follow in the particular case.

To repeat: the idea of the moral law as a harmonious and consistent set of principles, in as much as it is only a regulative idea, does not by itself rule out the possibility of conflicts between duties which are irresolvable. However there is another line of argument derivable from Kant's ethical writings which does seem to preclude duties being in conflict in the way Nussbaum describes. It involves appeal to a principle that Kant touched upon in a number of different places in his writings, although he never gave it any formal title. It is often referred to as the *ought*-implies-*can* principle (OIC principle for short). Kant's clearest formulation of it is probably in Part II of *The Metaphysics of Morals*: '[man] must judge that he *can* do

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what the [moral] law tells him unconditionally that he *ought* to do.'[5] [Emphases as in Kant's text.]

Its relevance to the issue of conflicts between duties is as follows. Such a conflict exists when I have a duty to do action A and a duty to do some other action B and I cannot both do A and do B. From the OIC principle it follows that if I judge that I ought to do A then I must judge that I can do A, and that if I judge that I ought to do B then I must judge that I can do B, and that, if I judge both that I ought to do A and ought to do B, then I must judge that I can both do A and do B. *Ex hypothesi*, however, I cannot both do A and do B; and therefore I cannot judge that I can both do A and do B. And if that is the case, then (invoking the OIC principle contrapositively), I cannot judge *both that I ought to do A and ought to do B*. The situation described by Nussbaum in which the moral agent is confronted by incompatible duties cannot arise. A moral agent cannot think of himself as having incompatible duties, because he would have to think of himself as at one and the same time able to carry them out (because they are duties) and not able to carry them out (because they are incompatible).

Not everyone would be happy to see the OIC principle used in this way. Bernard Williams, for one, has denied that the principle has the implication I have claimed for it, namely that conflicts of duties cannot arise. At most, he argues, it implies that, if I cannot do both A and B, then it is not the case that I ought to do both A and B. But, then, he goes on,

> no agent, conscious of the situation of conflict, in fact thinks that he ought to do both of the things. What he thinks is that he ought to do each of them; and this is properly paralleled at the level of 'can' by the fact that while he cannot do both of the things, it is true of each of the things, taken separately, that he can do it.[6]

In order to rule out the possibility of conflict between duties we need, he says, to supplement the *ought*-implies-*can* principle by a further principle, which he calls the *agglomeration* principle. This is that 'I ought to do A' and 'I ought to do B' together imply 'I ought to do A and B'.

By way of bringing home the possibility that the agglomeration principle might not hold in the case of 'ought' statements, Williams points out that it does not hold for certain other ways in which we evaluate actions. For example, I may consider it desirable or prudent for me to do A (marry Joan) and desirable or prudent for me to do B (marry Susan), but not desirable or prudent for me to do A *and*

[5] *The Metaphysic of Morals*, p. 146.

[6] 'Ethical Consistency' in *Problems of the Self* (Cambridge, 1973), p. 181.

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B (commit bigamy by marrying both). And clearly also, at the level of wants, a person may want to marry Joan and also (when he thinks of Susan's sterling qualities) want to marry Susan, without thereby being committed to wanting to marry both of them. The agglomeration principle is therefore not self-evident in all cases and we ought (Williams thinks) to be prepared to give it up if a more realistic picture of moral thought emerges from abandoning it.

> We can in fact see the problem the other way round: the very fact that there can be two things, each of which I ought to do and each of which I can do, but of which I cannot do both, shows the weakness of the agglomeration principle.[7]

This last claim is, of course, the very point in dispute. But clearly it will not do here simply to reiterate my earlier argument, based on the *ought*-implies-*can* principle, that this is not a possible state of affairs. Williams' doubts about the application of that principle in this context must be met. Let me just note, first of all, that I partly anticipated Williams' criticism in the way in which I earlier set out the argument from 'ought' implies 'can'. I would be prepared to grant that the moral agent, conscious of being in a situation of conflict, does not think that he ought to do both A and B. But he surely does think both that he ought to do A and that he ought to do B? And it was the latter formulation, not the former, which I appealed to in the argument: that he could not think both that he ought to do A and that he ought to do B, if he were conscious that A and B were incompatible. The agglomeration principle in the form in which Williams sets it out is irrelevant. A weaker form of the agglomeration principle, if one wants to call it that, is here quite sufficient. And without that degree of agglomeration, I do not see how one could talk about the moral agent being conscious of a *conflict* between duties (as opposed to being conscious of swithering between two different views about what his duty is).

The matter can be put in another way. It is true that there is for the moral agent in the case no moral argument whose conclusion is that he ought to do both A and B. What confront him, presumably, are separate, but equally conclusive moral arguments, that he ought to do A and that he ought to do B. However since it is one and the same individual for whom both arguments are conclusive, it is of no particular significance that he thinks that he ought to do A and ought to do B as a consequence of two separate but equally conclusive moral arguments rather than one. In other words, the difference between his thinking that he ought to do both A and B and his thinking both that he ought to do A and that he ought to do B is a

[7] Ibid., p. 182.

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difference in his *grounds* for thinking that he ought to do A and ought to do B rather than a difference in what he thinks he ought to do.

A difference in the grounds I have for thinking that I ought to do A and ought to do B may of course be important. The fact that I have different grounds for thinking that I ought to do A from those I have for thinking that I ought to do B at least opens up the possibility that I may come to see the argument in favour of my doing A as less weighty or conclusive than the argument in favour of my doing B (or vice versa). That accounts, I should say, for the different *feel* of the thought that I ought to do both A and B from the thought both that I ought to do A and ought to do B. It has to do with a difference in epistemic vulnerability, so to speak, rather than a difference in content.

Finally, I think that Williams' examples where he says the agglomeration principle does not hold deserve closer scrutiny. Someone may want to marry Joan and want to marry Susan but not want to marry Joan *and* Susan. That seems uncontentious. But the case needs to be specified more precisely. In a polygamous society it would not seem odd to say that someone who wants to marry Joan and wants to marry Susan must want to marry them both. But if we take 'marry' to mean 'take for one's life's companion and helpmeet, forsaking all others', then it is not logically possible that someone could genuinely want to marry Joan and also genuinely want to marry Susan. The claim that he both wants to marry Joan and wants to marry Susan can only be an idiomatic way of saying that he can't decide which of them he wants to marry; that he is, in a manner of speaking, oscillating between wanting to marry the one and wanting to marry the other.

In neither case, therefore, do we have the situation Williams describes, where someone wants A and wants B but doesn't want A *and* B. But couldn't there be such a situation? The case, let us say, of a polygamist who could marry both Joan and Susan and would be happy to marry either, but knows that, if he married both, they would be constantly quarrelling and making his life a misery. But here again, this is not a case of him wanting A and wanting B but not wanting A and B. It is a case of him wanting A *or* wanting B but not wanting A and B; where, since it is a question of alternatives, you wouldn't expect an agglomeration principle to operate.

Summing up: Williams' counter-examples, where the agglomeration principle is said not to hold, and which therefore pose the possibility that it might not hold in the case of ought-statements, are nothing of the kind. Of the three cases I've considered, in the first case the principle does hold; in the second case the claim that someone wants A and wants B is only an idiomatic, and potentially mis-

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leading, way of saying that he can't decide which of A and B he wants (so the question of whether the agglomeration principle holds doesn't arise); and in the third case also the question of whether the agglomeration principle holds doesn't arise, because the situation is not that the person wants A and wants B, but that he wants A *or* wants B.

It is time to return to the main discussion. I have argued, against Martha Nussbaum, that the *ought*-implies-*can* principle rules out the possibility that a moral agent could be confronted by incompatible duties. But it is of course open to her to retort that a theoretical principle may indeed seem to rule this out but that we encounter such conflicts between duties as a fact of practical living; and that it is the task of philosophy to give some account of this experience rather than to dismiss it on *a priori* grounds. In what remains of my paper, therefore, I shall argue not only that Professor Nussbaum's account of conflicts between duties is incoherent, but that, paradoxically, a Kantian account, or one drawing upon Kantian resources, is better able to explain and justify our feeling remorse in the sorts of situations she describes.

As a preliminary, let me just note an oversimplification of which Nussbaum is guilty in her account of a Kantian-type position. She says that where there is an apparent conflict between duties and the moral agent decides on balance that he ought to do one thing (sacrifice Iphigenia in the case of Agamemnon) rather than the other, then (for Kant) the latter is no longer regarded as binding: 'It quits the field; it no longer exerts any claim at all.'[8] And the inadequacy of that conclusion is shown by the fact that the person will often feel—and wouldn't he be lacking in a proper scrupulousness if he didn't feel?—that he needs to make reparations for his failure to carry out the action in question. But the inadequacy here is simply in her representation of the Kantian position. Where a Kantian moral agent is confronted by what seems to him a serious conflict of duties, it is hardly conceivable that he will decide that his duty is to do A and that B has no claim upon him whatsoever. What we would expect and what would be more in keeping with the seriousness of his quandary is that he decide that his duty is a complex package of doing-A-while-showing-a-proper-awareness-of-the-claim-of-B, or doing-A-and-making-reparation-for-not-doing-B. It is only the over-schematic representation of the moral agent's situation which makes it seems as if his choice must be an all-or-nothing one between A and B.

With that said, it is time to look at Professor Nussbaum's account of Agamennon's tragic conflict of duties at Aulis, which is the con-

[8] *Fragility and Goodness*, p. 32.

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crete example she discusses in greatest depth. She points out that the sacrifice of Iphigenia is regarded by the Chorus as necessary; but that they also blame Agamemnon. Had he opted to preserve Iphigenia, he would have been abandoning the expedition and have disobeyed Zeus—involving him in even greater guilt. And this, she argues, corresponds to something we experience in our own lives, that there are situations where, through no fault of our own, we cannot act (or fail to act) without incurring guilt or sacrificing some deeply held commitment. But if we look more closely at her account of Aeschylus' play, it does not bear out this conclusion. For, as she herself admits,

> The Chorus does not so much blame the fact of the action, for which they feel the gods bear a primary responsibility, though indeed it is a serious crime ... What they impute to Agamemnon himself is the change of thought and passion accompanying the killing, for which they clearly hold him responsible.[9]

[I.e. the fact that, having decided that he must sacrifice his daughter, he warmly embraced his task and carried it through without compunction.] This, however, changes the situation entirely. For in that case the blame and the guilt is something that Agamemnon *could* have avoided, if he had sacrificed Iphigenia with a heavy heart and with a compassionate awareness of his daughter's innocence and terror. There are no grounds here for claiming that he was inevitably involved in guilt.

His situation is, then, according to Nussbaum's own description, that which I said confronted the Kantian moral agent who is in a serious moral quandary, torn between two irreconcilable moral claims. He has to work out a way of acting in response to the two claims which will do justice to both, and which will then uniquely be his duty, what he ought to do, in that situation. No doubt that will be, at best, the best of a bad job. And any decision about the balance to be struck between the two moral claims is open to the charge that it is deeply, even culpably, flawed. But that is a different matter altogether from saying that Agamemnon was in a situation where he was bound to do wrong whatever action he chose to do and however he was able to respond.

My point is that Professor Nussbaum cannot make intelligible the claim that Agamemnon is to blame or should feel remorse for what he has done without reinvoking notions of responsibility and choice which it seemed the intention of her account of tragic conflict to exclude. Remorse implies that one could have acted differently. But clearly it wouldn't be enough to say that someone 'could have acted

[9] Ibid., p. 36.

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differently', if by that you meant only that he could have done something even worse and more blameworthy than what he actually did. In identifying the blinkered or unfeeling way in which Agamemnon sacrifices Iphigenia as that which renders him liable to blame, Nussbaum is conceding the point that you cannot separate the notions of blame and responsibility, that blame can only be attributed where the moral agent's options are not limited to failing to fulfil one duty and/or failing to fulfil another.

This, of course, is precisely the point of the *ought*-implies-*can* principle. If it were the case that I had to choose between doing A and doing B, each of which had strong claims to be thought of as my duty, then it would be natural to feel regret that I couldn't do the one which, on balance, had the less pressing, but still not negligible claim. And this might be accompanied in the most difficult cases by something not unlike a sense of moral unease or guilt. No doubt the most likely source of this would be a suspicion that I had made the wrong choice. But if we set that aside and I were sure that I had made the best choice available to me, how could I regard the persistence of that sense of unease and guilt as anything other than *pathological*—as a symptom of an up-to-a-point pardonable over-scrupulousness, but still an *over*-scrupulousness; not something that one could or ought to stand over, or think warranted by the circumstances? And surely this or something like it is what we would say to someone in these difficult cases: 'Don't take it so much to heart. You made the best choice you could in the circumstances. You're not to blame that you had to make a terrible decision.' And we have, if anything, even more reason to say this in the case postulated by Martha Nussbaum, in which *ex hypothesi* the person is confronted by two conflicting duties and it is not possible to carry out both of them.

Let me be clear. I am not arguing that a sense of moral unease or remorse is always out of place in difficult decisions. Only that it would be out of place if the moral agent's situation was, as Nussbaum describes it, one in which he has a conflict of duties and he cannot do them all. A lingering sense of unease in situations where we have, however sincerely, tried to do our duty is (is it not?) a common enough experience for a moral agent, and there need be nothing pathological or irrational about it. A sense of having been confronted—seemingly—by two incompatible moral claims is, I would think, particularly liable to leave behind a legacy of such unease. This is partly for the reason I mentioned earlier, that one can't be sure in such a finely balanced case that one's decision to act upon the one rather than the other isn't deeply, and perhaps culpably, flawed by self-interest or self-deception. (Kant has good things

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to say about this aspect of morality.) But a more interesting reason in the present context is that, if the moral agent has, as a Kantian would have, grounds for thinking that there cannot be a genuine conflict of duties, then the fact that he appears to be confronted by such a conflict is bound to strike him as an index of his own moral shortcomings and lack of moral imagination. A better person, had he been such, would have seen his duty more clearly or been more fertile or imaginative in his moral responses. So that paradoxically, I would argue, a Kantian perspective is better able to account for the sense we sometimes have of being confronted by conflicts between duties and the fact that in such cases, whichever we choose to do, we are left with lingering sense of our own inadequacy, a sense that we have failed to meet the claims upon us as completely as we might and should have done.

One closing remark. Professor Nussbaum says in her own summing up that, 'We can claim to be following a part of the deep motivation behind Kant's own view of duty when we insist that duty does not go away because of the world's contingent interventions.'[10]—meaning by that that a duty continues to be a duty, even when, in circumstances of conflict between duties, it is not possible to carry out both. But the alleged greater stringency of that position is a sham. Her insistence that there are duties that we cannot discharge in full, far from raising our sense of the moral demand, draws its sting. If we can be guilty, whatever we choose to do, then to be guilty lacks the moral edge it is typically taken to have. It is a burden to be borne—stoically or however—rather than a personal failing to be owned up to. And that weakening or watering down of our sense of the moral is the main danger lurking behind the claim, which might otherwise seem so innocuous, that there can be conflicts between duties.

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[10] Ibid., p. 49.

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