› The Phenomenological Trouble with Moral Dilemmas: Taking 'Applied Worries' Seriously within Theoretical Ethics

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I   Introduction

It is often concrete situations—be these real or be they fictional—and their details that force us to rethink our ready-made moral judgments, especially when we simply try to apply some general ethical view to the situation at hand. One of the main questions in this regard is whether the details of the situation are reflected adequately in moral reasoning and the judgment thus derived. Sometimes special or even completely new circumstances and features have to be taken into account, and it often enough turns out to be an open question, at least for the time being, of how exactly these new circumstances and features have to be dealt with from a moral perspective. For the purpose at hand, I dub such concrete concerns simply as *applied (ethical) worries*. Such applied worries are thus at least *prima facie* capable of posing a challenge to certain positions of theoretical ethics whenever these positions, or the key assumptions they are based on, prove to be unable to take such applied worries into account adequately—be it even to give sufficient reason to dismiss such worries as misguided. So understood, it comes as no surprise that specialized forms of *Applied Ethics* have emerged which focus exclusively on certain selected practical contexts and their related applied worries. This, however, raises the question of the relationship in which applied ethics and theoretical ethics stand, or should stand, to one another.

　　I take it that there are basically the following three ways of conceiving the relationship between applied ethics and theoretical ethics. Firstly, applied ethics could be seen as nothing more

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than an application of a given position in theoretical or normative ethics. However, such an approach has to cope with the problem of running the risk of implausibly neglecting, or at least underestimating, the special circumstances and problems posed by certain applied contexts.

Secondly, applied ethics could be seen as independent from theoretical ethics. If applied ethics were then able to solve all ethical problems adequately, theoretical ethics would appear to become superfluous, aside perhaps from metaethics. However, given that certain ethical problems located on a more theoretical level do not simply vanish, applied ethics would, as a consequence, have solved these problems within theoretical ethics as well. Hence, theoretical ethics would not have become superfluous at all, but have merely been taken over by applied ethics. It would be nothing more than a simple change of labels.

Thirdly, applied ethics and theoretical ethics could be seen as *mutually influential*. The main consequence of this would be that their respective assumptions and conceptions would have to be harmonized or mutually incorporated in order to be able to deal coherently with worries on either side that intuitively appear as sufficiently plausible and necessary for accommodation. Such attempts at construing a coherent combination of applied ethics and theoretical ethics would basically have to be understood as trying to reach some kind of "reflective equilibrium."[2] Moreover, the idea of a strict distinction between applied ethics and theoretical ethics would have to be regarded as misguided. For, understood this way, applied ethics and theoretical ethics would not amount to independent ethical reasoning, but simply highlight different, albeit intimately connected, issues when trying to address certain ethical challenges in general.

This third option is the position I would like to presuppose in my paper. Taking applied worries seriously within theoretical ethics thus simply amounts to the general challenge of developing a coherent comprehensive position that provides enough conceptual room to take into account the respective worries from both perspectives adequately. In the following, I would like to flesh out this approach by way of example. I will address the question of how situations should be analyzed which, from the agent's point of view, appear to be *moral dilemmas*, i. e. the agent's apparent confrontation with a situation in which, for moral reasons, he ought to do (at least) two things, but cannot do both (or all of them).[3] More specifically, I will be concerned with the applied worry in regard to the ethical assessment of the so-called *emotional moral remainder*, i. e. regret or guilt feelings on the agent's part.[4]

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2   The term is, of course, borrowed from John Rawls. For Rawls's own conception of "reflective equilibrium" as justificatory basis of his theory of justice and of political liberalism, see Rawls 1971, ch. 1.4,, and Rawls 2001, §10.

3   Alternatively, the agent may be faced with a situation in which every possible course of action is apparently morally forbidden. Such situations have come to be known as *prohibition* or *tragic dilemmas*. For a general introduction to the debate on moral dilemmas and the various distinctions invoked, see McConnell 2010. See also Gowans 1987 and Mason 1996.

4   Accordingly, regarding the metaethical question of whether 'real' moral dilemmas exist at all, the so-called *phenomenological argument* was put forward in order to argue in favor of their existence. Basically, the phenomenological argument states that moral dilemmas exist because agents experience regret or guilt feelings over an unfulfilled moral duty, and it is assumed that experiencing regret or guilt feelings is rational and adequate. See, for example, Bernard Williams' classical reference to regret in Williams 1965. However, the crucial assumption that regret or guilt feelings are rational and adequate is itself a matter of contention. For, the rationality or adequacy of regret or guilt feelings obviously hinges on assessing the situation as morally dilemmatic in the first place. Moreover, it is arguable exactly what kind of moral emotion is at stake, anyway. For, regret and guilt feelings apparently have different implications in regard to the moral assessment of the situation in question. Hence, the phenomenological argument proves to be unconvincing in this simple form.

In the following, I will firstly sketch, from the perspective of theoretical ethics, the main argument why a lot of philosophers are opposed to the idea that 'real' moral dilemmas could exist (II). Next, I will show how these opponents of moral dilemmas nevertheless go on to try to provide conceptual room in their position for an incorporation of the applied worry of an emotional moral remainder (III). However, I will argue that the conception of *prima facie moral ought*, which does the main work when it comes to the question of how to incorporate the emotional moral remainder, remains unconvincing (IV). As a consequence, there is too little conceptual room left to do justice to the diverse and intuitively plausible range of moral emotions involved in such situations. Thus, the applied worry cannot be taken seriously enough from the perspective of theoretical ethics. This raises the questions of what kind of conceptual framework would be able to deal with the emotional moral remainder adequately and which kind of moral emotion has to be acknowledged accordingly. I will address these two crucial questions in a final step and, firstly, argue for a genuinely normative or moral approach when it comes to analyzing moral dilemmas (V). Such a genuinely normative conceptual framework will allow for an analysis of moral dilemmas which is able to incorporate the emotional moral remainder in enough detail. Secondly, I take on the opposite applied worry, namely that feelings of guilt, which would imply actual guilt on the agent's part, if they were considered as being adequate, should nevertheless be regarded as inadequate because they are obviously unfair if the agent faces a moral dilemma through no fault of his own. In this respect, I will argue that, due to the possibility of excuses, the normative approach can do justice to this applied worry about fairness, as well (VI). Finally, I will argue that regret, when understood merely as the regret felt by a spectator, also proves to be an inadequate emotional moral remainder. I will suggest that, instead, *agent regret* and *tragic remorse* account best for an agent's special, and sometimes even tragic, emotional predicament when faced with a moral dilemma (VII).

II   Rejecting the possibility of 'real' moral dilemmas

The main argument against the possibility of 'real' moral dilemmas put forward in theoretical ethics is straightforward enough: if 'real' moral dilemmas existed, moral theory would be inconsistent and thus useless. While the details of the various forms of this argument draw heavily on deontic logic, the main line of thought is easy enough to grasp. Firstly, and for the sake of the argument, the existence of 'real' moral dilemmas is assumed, i.e. the proposition that an agent is morally obligated to do *a* as well as morally obligated to do *b*, but cannot do both *a* and *b*.[5]

1)   O(*a*) & O(*b*) & –C(*a* & *b*)   = definition of a moral dilemma (MD)[6]

Secondly, two principles of deontic logic are invoked that are assumed to be self-evident: "ought implies can," stating that, if you *ought* to do *a*, you *can* do *a*, on the one hand, and the so-called agglomeration principle, which states that, if you ought to do *a* and you ought to do *b*, you ought to do *both a* and *b*, on the other hand.

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5   The symbolizations of deontic logic used here are: "O" for "Ought" or "Obligation," "C" for "Can," "*a, b,* etc." for actions or states of affairs to be realized, "→" for the clause "if, then," "&" for the conjunction "and," and "–" for a negation.

6   An alternative definition of moral dilemmas should also be mentioned. It states that an agent is morally obligated to do A and is, at the same time, morally obligated to abstain from doing A: O(a) & O(–a).

2) $O(a) \rightarrow C(a)$ = "ought implies can"

3) $O(a) \ \& \ O(b) \rightarrow O(a \ \& \ b)$ = agglomeration principle

Taken together, these three premises inevitably lead to logical contradictions. For, the existence of a moral dilemma, as stated in the first premise, includes the proposition that you *cannot* do both *a* and *b*. Yet, it also includes the two propositions that you are obligated to do each *a* and *b*, which, in combination with the third premise, i.e. the agglomeration principle, yields the conclusion that you ought to do *both a* and *b*. However, following the second premise, i.e. the principle "ought implies can," the conclusion has to be drawn that you *can* do both *a* and *b*, which logically contradicts the respective proposition in the first premise, which was the starting point of the argument and the main assumption of the definition of a moral dilemma in the first place: you *cannot* do *both a* and *b*.

4) $O(a \ \& \ b)$ from 1) and 3)

5) $C(a \ \& \ b)$ from 2) and 4)

6) $-C(a \ \& \ b) \ \& \ C(a \ \& \ b)$ from 1) and 5): *logical contradiction*

Furthermore, another logical contradiction should be mentioned. For, using the proposition from the first premise that you cannot do both *a* and *b* as well as the contrapositive of the principle "ought implies can," it follows that it *cannot* be the case that you are obligated to do both *a* and *b*, which logically contradicts the definition of a moral dilemma together with the agglomeration principle, stating that you *are* obligated to do both *a* and *b*.

7) $-O(a \ \& \ b)$ from 1) and 2), contrapositive

8) $O(a \ \& \ b) \ \& \ -O(a \ \& \ b)$ from 4) and 7): *logical contradiction*

Assuming that the agglomeration principle and the principle "ought implies can" are valid,[7] or at least more plausible than accepting the idea of 'real' moral dilemmas, many philosophers conclude accordingly that the assumption of 'real' moral dilemmas should be dropped in order to prevent moral theory from becoming inconsistent and thus useless.[8]

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7   However, both principles face serious theoretical challenges, so their validity cannot simply be taken for granted. Bernard Williams, for example, questions, in his seminal article, the agglomeration principle on the basis that we are not, in all cases, obligated to do both *a* and *b* if we are obligated to do each *a* and *b*. Cp. Williams 1965, 132ff. Drawing on one of his examples, consider the case of a man promising two women—separately, of course—to marry them. Surely, it cannot be concluded that the man ought to marry both women at the same time. Furthermore, with regard to the principle "ought implies can," it is a matter of contention how it has to be understood exactly, e.g. as conceptual implication or as conversational implicature or even as moral principle. Moreover, the notions of "ought" and "can" are a matter of contention, as well, leading to the question of what kind of "ought" (allegedly) implies what kind of "can." For an extensive discussion of the principle, see Kühler 2012a.

8   Apart from the line of argument mentioned above, it has been argued that logical inconsistencies could even be derived without referring to "ought implies can" and the agglomeration principle. See on this note, for example, Brink 1994, 111ff., and De Haan 2001, 273ff. However, I have argued elsewhere that these arguments remain unconvincing, for they implicitly have to presuppose the principle "ought implies can." Cp. Kühler 2008a and Kühler 2012a, ch. 7. In any case, this issue does not play an important role for the purpose at hand. The crucial point here is simply the claim that, given certain deontic principles, the assumption of 'real' moral dilemmas leads to inconsistencies in moral theory and should therefore be abandoned.

Yet, simply rejecting the possibility of 'real' moral dilemmas cannot be the whole story. For, we are obviously faced with conflicting moral obligations numerous times in everyday life. Given, for example, that we have a moral obligation to return borrowed money punctually, it is easy enough to imagine that, one day, I might face a situation in which I have borrowed some money from two of my friends, each of whom I have to pay back today. Yet, today I am unable to do so. All I can do is to repay one debt, but not both.

The rejection of the idea that I am faced with a 'real' moral dilemma, then, surely leaves a number of questions open, the most crucial ones being: first, given that I can, at least, repay one debt and actually do so, what does that mean for the other claim that I am obligated to repay the second debt today, just as well? Apparently, if I cannot be obligated to do something in case I cannot do it,[9] I can no longer be obligated to repay my second debt.[10] My initial respective moral obligation, giving rise to the moral dilemma in the first place, would seem to have simply disappeared.

Second, as a consequence, what kind of reaction on my part, especially concerning moral emotions, could still be justified as adequate with regard to the second debt left unreturned, if I am apparently no longer under an obligation to repay it? Given that I—the morally conscientious man I am—either regret or even feel guilty about not repaying a debt to a friend punctually, what is to be said about these moral emotions from the perspective of theoretical ethics? How can they be accounted for if their crucial intentional object, i. e. a moral obligation left unfulfilled, is forfeited? Or do they have to be dismissed as misguided? If so, can this consequence be regarded as plausible from the perspective of applied ethics, which would exactly focus on such crucial details and on a fine-grained analysis of the agent's emotional predicament?

III Trying to acknowledge the emotional moral remainder while rejecting the possibility of 'real' moral dilemmas

Now, even opponents of 'real' moral dilemmas usually acknowledge the plausibility of an emotional moral remainder and also consider at least some of these moral emotions as morally adequate.[11] Consequently, they try to incorporate them in their analysis of such apparently dilemmatic situations. The key concept in this respect is the notion of "*prima facie* moral ought (or duty)"[12] in contrast to "*actual* moral duty."[13] The main idea of this distinction is this: in every situation, there can be only one *actual* moral duty which the agent is obligated to follow

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9   As mentioned above, this results from the contrapositive of the principle "ought implies can," i. e. "cannot implies not-ought."

10   Usually, one would assume that I can at least no longer be obligated to repay my second debt *today*, but should repay my friend some time later when I have the necessary amount of money. However, it remains dubious and a matter of contention whether and how moral obligations can "survive" temporal inability on the addressee's part. For, my obligation was to repay my debt *today*, and not some time later. Yet, according to the line of thought so far, the obligation to repay my debt today is no longer valid.

11   Apart from the *emotional* moral remainder, other moral remainders also have to be accounted for. In the example mentioned above, one would think that at the very least I owe my friend an explanation for not repaying him.

12   For simplicity's sake, I use "duty," "ought" and "obligation" interchangeably here.

13   On this note, opponents of 'real' moral dilemmas basically follow the account of Sir William D. Ross. Cp. Ross 1930, ch. 2, where Ross also uses the phrase "duty *sans phrase*" for actual duty. For a helpful explanation, see, for example, Zimmerman 1996, 5f. and especially ch. 5. For a critical view with respect to the topic at hand, see below (section IV) as well as Kühler 2008a and Kühler 2012a, esp. ch. 9.

and which the agent also can follow. However, there can still be a number of prima facie moral duties which also apply to the situation at hand, as they pick out relevant and valid moral aspects. Hence, the term "prima facie" should not be understood as simply meaning "apparent" or "seeming." Just like an *actual* moral duty, *prima facie* moral duties are '*real*' moral duties, albeit not duties the agent should act upon. Accordingly, the deontic principles mentioned above, i.e. the agglomeration principle and the principle "ought implies can," apply only to actual duties, but not to prima facie moral duties.

The relationship between an agent's actual moral duty in a given situation and the prima facie moral duties that apply to the situation, as well, is then as follows. Firstly, every morally relevant aspect of the situation is taken into account and depicted as a respective prima facie moral duty. Secondly, these prima facie moral duties are weighed against each other, i.e. they are considered in respect to which of them, relative to all others, counts the most morally. If, for example, I am *prima facie* morally obligated to keep an appointment and also *prima facie* morally obligated to help the victim of car accident I happen to encounter, and if I cannot fulfill both duties, *all things considered*, my moral obligation to help the victim (usually) counts more than my obligation to keep my appointment. Hence, helping the victim becomes my *actual* moral duty—this is, what I ought to do—while my duty to keep my appointment is overridden and remains in its prima facie status. It will, for good moral reasons, not be fulfilled. A *prima facie* moral 'ought' thus does *not* imply 'can.'

Furthermore, given the case that two or more prima facie moral duties are symmetrical, i.e. equally strong, or incommensurable, i.e. cannot be measured against each other and thus also have to be taken as equally valid, the agglomeration principle also does not apply. In such cases, it is argued that the agent's actual moral duty is now a *disjunctive* one, namely to fulfill one *or* the other of these prima facie moral duties. So understood, both prima facie moral duties are overridden by the disjunctive actual moral duty to do *either a or b*.[14]

9)   o(a) & o(b) & –C(a & b) → O($a \lor b$)[15]   = symmetrical or incommensurable prima facie duties yield a disjunctive actual duty

Consequently, when understood exclusively in terms of prima facie moral duties, moral dilemmas—or, to be more exact, moral *conflicts* that are soluble via a disjunctive actual moral duty—are, indeed, possible because they no longer lead to logical inconsistency in moral theory.

Following this line of thought further, it is argued that prima facie moral duties which necessarily remain unfulfilled in cases of conflict, but which, nevertheless, remain 'real' moral duties, can also explain any moral remainder, thereby also serving as intentional objects of an *emotional* moral remainder.[16] Hence, it is quite possible to say that an agent regrets, or feels guilty about, one of his prima facie moral duties remaining unfulfilled, even if this is due to good moral reasons. Consequently, opponents of 'real' moral dilemmas seem to be able to do theoretical justice to the applied worry that apparently plausible emotional moral reactions by

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14   However, Walter Sinnott-Armstrong has argued that, *all things considered*, neither of the prima facie moral duties in question is overridden by a different prima facie moral duty. Instead, they are all *non-overridden*, so that introducing the disjunctive actual moral duty has to be regarded as an extra move. Cp. Sinnott-Armstrong 1996, 50f.

15   Here, "o" stands for "prima facie moral ought" and "$\lor$" for the disjunction "or."

16   On this note, cp. Brink 1994, 105 and 121f., fn. 17, who draws helpful further distinctions between different intentional objects of regret, as well.

agents who face moral dilemmas[17] should be taken seriously and incorporated into the analysis of such situations.

However, not all emotional moral reactions are considered as being adequate. While regret is, indeed, seen as rational and adequate, guilt feelings are considered to be inadequate because, if they were seen as adequate, they would imply actual guilt on the agent's part. Yet, the agent cannot be judged as guilty for not fulfilling a prima facie moral duty which he explicitly ought *not* to fulfill due to its merely prima facie status. For that reason, while it is rational for me to regret not keeping my appointment, it would be irrational for me to feel guilty about it—presuming, of course, that I have fulfilled my *actual* moral duty to help the victim.[18]

All in all, everything seems to be in order, and the applied worry of taking seriously the emotional moral remainder of agents facing moral dilemmas or moral conflicts seems to be accounted for in theoretical ethics. The position sketched above even seems to present sufficient reason as to which moral emotion should be acknowledged as being adequate and which should be rejected as irrational. Where, then, is the flaw in this line of thought?

IV   The impossibility of acknowledging the emotional moral remainder when rejecting the possibility of 'real' moral dilemmas

My main concern with the line of thought presented above is with the notion of "prima facie moral ought (or duty)." First of all, the general concept of *moral ought* invoked in the argument above, especially with regard to the principles of deontic logic, i. e. the agglomeration principle and the principle "ought implies can," is based on a Kantian understanding of moral duty in the sense of *practical necessity*. Hence, if I am morally obligated to do *a*, doing *a* represents a practical necessity, i. e. I *will* (necessarily) do *a*—at least if I am a rational or morally conscientious person. So understood, this Kantian understanding of *moral ought* draws heavily on an analogy to *modal necessity*, which also explains why the principle "ought implies can" is seen as self-evident. For, if some event is necessarily bound to happen (because of modal necessity), it will actually happen, which, in turn, implies, of course, that its occurrence is *possible.* Analogously, if a moral duty represents a practical necessity, the (rational or moral) agent in question *will actually* act accordingly, which, indeed, implies that the agent *can* act accordingly. Such an understanding of *moral ought* also yields the validity of the agglomeration principle. For, if doing *a* and doing *b* is equally a matter of practical necessity, the agent in question will actually do *both a* and *b*.

Given the distinction between actual moral duties and prima facie moral duties, the above understanding of *moral ought* obviously applies only to *actual* moral duties, while prima facie moral duties cannot be a matter of practical necessity. This, however, raises the question of what kind of moral duty a prima facie moral duty can still be if the crucial feature of the concept of *moral ought*, i. e. the notion of practical necessity, is explicitly abandoned. This holds especially for *overridden* prima facie moral duties, which the agent explicitly ought *not* to fulfill.[19] Does it

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17   Or, once again more precisely, soluble moral conflicts.

18   With regard to the aforementioned example of my two debts, the adequacy of my moral emotion also hinges on the question of whether I was at (moral) fault in not having the necessary money today. I will come back to that aspect later on.

19   Even in the case of the disjunctive actual moral duty to do *either a or b*, the individual prima facie moral duties to do each *a* and *b* are overridden. It is only the general content, i. e. *a* and *b*, that stays the same—barring the junction between the two. On this note, cp. again Sinnott-Armstrong 1996 , 50f.

really make sense to say that, while I have a '*real*,' but *overridden* prima facie moral duty *to do a*, I explicitly shall not act upon it? The problem becomes even more obvious when put this way: while I *prima facie*, yet '*really*' morally ought to do *a*, at the same time, I *actually* ought *not* to do *a* because the moral ought in question is overridden by a different one.

This whole idea strikes me to be just as inconsistent as the results of the initial argument presented by opponents of 'real' moral dilemmas. Therefore, if the general understanding of the concept of moral ought in the sense of practical necessity shall be kept, the notion of 'real' prima facie moral duties becomes unconvincing and has to be dropped. Prima facie moral duties would indeed be only *apparent* or *seeming* moral duties which (completely) disappear once the actual moral duty has been identified. This, however, has the consequence that it is no longer possible to refer to a 'real' moral obligation which is, nevertheless, overridden and thus necessarily remains unfulfilled in order to explain and justify further normative or evaluative judgments, i. e. any moral remainder, thus, of course, also including the *emotional* moral remainder. Hence, not only feelings of guilt, but also regret about a moral duty left unfulfilled would have to regarded as irrational and being inadequate. For, there can no longer be any moral duty serving as an intentional object for such emotions. The critical result is, therefore, that the applied worry with regard to the emotional moral remainder *cannot* be taken seriously within such a theoretical conceptual framework.

V   A genuinely normative conceptual framework as an alternative

Nevertheless, the above result leaves open another option, namely to drop the general understanding of moral duties in the sense of practical necessity and thus the analogy to modal necessity. This way, the concept of moral ought would basically amount only to the *normative claim* that *a* and *b* should be done or realized by the agent in question. Hence, no further thesis would be implied with regard to the *actual* fulfillment of this claim.

This alternative conceptual framework makes use of a distinction between two opposing *directions of fit*, serving as theoretical background assumption to explain the difference between descriptive statements and normative ones.[20] On the one hand, the main idea of *descriptive* statements is that they should depict truthfully some portion of the world, i. e., so to speak, "fit" the world. Accordingly, they are subject to a *mind-to-world direction of fit*. Hence, if there is a lack of conformity, i. e. if a descriptive statement does not depict the portion of the world in question accurately, this descriptive statement has to be considered as false, and it is the statement, not the world, that has to be changed in order to establish the claimed truth.

On the other hand, *normative* claims are thought of as not depicting truthfully some portion of the world. On the contrary, they convey some state of the world that is usually not the case (yet), but one that should be the case and be brought about. Normative claims thus primarily introduce a normative standard with respect to which the state of the world can be evaluated as being in accordance or not. Consequently, normative claims are subject not to a *mind-to-world*, but to an opposed *world-to-mind direction of fit*. Accordingly, if there is a lack

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20   For an instructive overview, see Searle 2001, esp. ch. 2. See also the seminal passage in Anscombe 1963, 56, as well as the discussions in Platts 1979, 256f., Smith 1987, 50–58, Schueler 1991, Humberstone 1992, Zangwill 1998, Sobel/Copp 2001, and Milliken 2008. For a detailed discussion of the complex normative implications of *directions of fit* as they are being assumed here, i. e. of their comprised claims of what *should* be changed in order to establish "fitness," see Seebaß 1993, 86–143. For the following explanation, cp. also Kühler 2012b.

of conformity, i. e. if a normative claim has not (yet) been met, this does not mean that the normative claim in question is false. It is not the normative claim that has to be changed, but it is rather a matter of changing the world to fit the normative standard. If that is not done or proves to be impossible, it is again not the normative claim but the world that remains, so to speak, "false" according to the normative standard.

Two general conclusions can be drawn at this point: first, it is not the theoretical, but rather the practical sphere to which normative claims genuinely belong. In this respect, the analogy to the notion of necessity in modal logic mentioned above is misguided, anyway. Second, using the conceptual framework just described, it should become clear that, consequently, especially the principle "ought implies can" can no longer be regarded as self-evident. It is rather a matter of a genuine moral dispute whether addressees of normative claims *should* always be able to fulfill their obligations—which is indeed usually a good idea for reasons of fairness. However, given that the principle "ought implies can" loses its overall validity, it could very well be argued that, at least in case of moral dilemmas, the conflicting moral obligations should be regarded as staying in force in order to be able to do justice to the tragic predicament the agent finds himself in, as well as to any moral remainder involved. Moreover, if the principle "ought implies can" is dropped, at least in case of moral dilemmas, moral theory is no longer in danger of becoming inconsistent when it includes an acceptance of the possibility of 'real' moral dilemmas. For, no normative conclusion can be drawn, at least that easily, from the fact that the agent in question cannot do both *a* and *b*.[21]

Yet, plausible as these two conclusions may be on a general theoretical level—which is indeed the position I would favor as a starting point—, this position now runs the risk of providing too much conceptual room for moral remainders. For, so understood, it seems that, if all moral obligations remain in full force, not only feelings of guilt on the agent's part, but also the agent's actual guilt for not fulfilling one of his moral obligations would have to be accepted as rational and being adequate. Surely, however, there is something wrong or unfair with the idea of an agent being guilty if he finds himself in a moral dilemma through no fault of his own. The pendulum of the applied worry of taking seriously the emotional moral remainder in moral dilemmas would thus swing in the opposite direction, again for intuitively plausible and good moral reasons. Therefore, the theoretical analysis just sketched has to provide some additional conceptual tools in order to address this last applied worry about a lack of fairness.

VI Taking the applied worry of the emotional moral remainder seriously: feelings of guilt, fairness, and the possibility of excuses

The first conceptual tool to be invoked for reasons of fairness within such a genuinely normative or moral discussion about the guilt or blameworthiness of agents facing moral dilemmas is the possibility of *excuses*.[22] The respective principle of fairness is this: *no agent is to be considered guilty or blameworthy for not fulfilling one of his moral obligations if he is unable to fulfill it through no fault of his own*. While this principle can indeed be regarded as a variation of the principle

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21   It should be noted that drawing such conclusions on a conceptual level raises concerns about a naturalistic fallacy, as well. On this note, see Collingridge 1977, Pigden 1990, 2, and Statman 1995, 37. Cp. also Kühler 2008a and Kühler 2012a, ch. 5.

22   In this respect, see John L. Austin's seminal paper: Austin 1970. See also Suttle 1988 and Wallace 1994, ch. 5 and 6. Cp. also Kühler 2008b, Kühler 2012b, and Kühler 2012a, ch. 11.

"ought implies can," it does not refer to a conceptual implication but has to be understood as an explicitly normative or moral principle of fairness. Moreover, it does not concern the validity of moral obligations *per se*, but only the subsequent evaluation of the agent with regard to his possible guilt or blameworthiness. In this respect, a valid moral obligation is necessary in order to make sense of the idea of an excuse in the first place. For, if the agent were not under a valid moral obligation, there would be nothing to excuse. Instead, the agent would simply be morally justified in what he did. Hence, it has to be acknowledged that the agent did not fulfill one of his moral obligations. However, as he did so through no fault of his own or because he fulfilled a weightier or equally valid moral obligation instead, he is, for reasons of fairness, not to be considered as guilty or blameworthy. Accordingly, feelings of guilt can be judged as being inadequate.

Based on such an account, the examples mentioned above can be analyzed as follows: given that I have fulfilled my weightier moral obligation to help the victim of the car accident, with the result that I am no longer able to keep my appointment, it is, indeed, irrational for me to feel guilty about not keeping my appointment because I am excused and thus neither guilty nor blameworthy in this respect. Analogously, it is irrational for me to feel guilty about not paying back my second debt, at least as long as I am not at fault for my respective inability. In contrast, had I had enough money the night before and had I decided to spend it on booze, I would not face the situation through *no* fault of my own. Hence, the principle of fairness would not apply, and I would not be excused. This way, the normative approach proves to be quite able to take seriously the applied worry of a need for fairness when it comes to the question of the agent being guilty for not fulfilling one of his moral obligations and when it comes to judging the adequacy of his feelings of guilt.

VII Taking the applied worry of the emotional moral remainder seriously: 'agent regret' and 'tragic remorse'

Given that the genuinely normative framework introduced above is able to give a plausible answer to questions of fairness with regard to an agent's feelings of guilt, what are we to think of feelings of regret? It might be tempting to leave the story as it is at this point and just state that regret is the appropriate emotional moral remainder in cases where an agent faces a moral dilemma through no fault of his own. Yet, it should be noted that there are different kinds of regret which need to be distinguished. Usually, regret amounts to the idea of *spectator regret*, i. e. the kind of regret one feels when one witnesses something (morally) bad happening. As Bernard Williams put it, the corresponding thought is simply: "how much better if it had been otherwise"[23].

However, in case of moral dilemmas, the agent is not just a mere witness of bad events unfolding. Instead, he is the one to make a decision and act. It is because of him that a morally bad event is bound to happen, namely that one of his moral obligations remains unfulfilled. Accordingly, in the example of the car accident mentioned above, while it is, of course, the decision morally called for, it is still my decision to help the victim instead of keeping my appointment, and, in the example of my debts, it is still my decision which of my two friends I pay back today. Hence, mere spectator regret cannot be the adequate emotional moral reaction if the agent's *agential involvement* shall be taken seriously.

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23   Williams 1981, 27.

The notion of regret to be invoked here is *agent regret*. Agent regret is the kind of regret an agent experiences if something (morally) bad happens *because of him*. However, in case of moral dilemmas it should not be understood as referring merely to the agent's *causal* involvement without him making any decision or acting, as some authors on this emotion highlight.[24] Rather, it has to be understood as depicting explicitly the agential involvement mentioned above, i.e. the fact that it was the agent who made a decision and acted upon it—albeit, of course, within morally dilemmatic circumstances. Accordingly, I do not simply, i.e. as a mere spectator, regret the fact that a friend of mine does not get his money back, as had been promised to him. Rather, I regret that I am the one who decided not to pay him back and acted accordingly.

Furthermore, there may be cases of moral dilemmas in which even agent regret does not seem to be enough. Sometimes an agent might face a *prohibition* or *tragic dilemma* in which every possible course of action is morally forbidden or morally wrong in some crucial respect.[25] The paradigmatic example of such a tragic dilemma is "Sophie's Choice."[26] The situation is this: in a Nazi concentration camp, Sophie is told to choose between her two children. Based on her choice, one will be taken to the gas chamber, while the other will be allowed to live. If she refuses to choose, both will be killed. Apparently, Sophie faces a situation in which all options available to her are morally forbidden or morally wrong. Accordingly, after finally and desperately pointing to her younger child to be taken to the gas chamber, she suffers enormous feelings of guilt, which eventually leads to her committing suicide.

Now, even if Sophie is not guilty and her feelings of guilt are thus not justified according to the principle of fairness mentioned above, her tragic decision seems to call for something more than agent regret. Choosing one of one's own children to die is not something merely to regret, even in the form of agent regret. The emotional moral remainder in such tragic dilemmas should rather depict the thought that the agent made, or had to make, a terrible *immoral* decision that will most probably haunt him for the rest of his life. The morally tragic aspect of the situation in comparison to the other examples mentioned is thus that, while, in the other examples, the agent can at least fulfill one of his moral obligations, in tragic dilemmas, he has to face, through no fault of his own, a situation of inescapable moral wrongdoing, i.e. he can only choose between immoral acts.[27]

Based on such considerations, Stephen De Wijze has suggested the notion of *tragic remorse* as adequate emotional moral response in cases of tragic dilemmas.[28] Tragic remorse thus depicts the fact that the agent *repents* his actions, i.e. he feels remorse, although he knows perfectly well that he did the morally best he could under tragic circumstances and is thus not to be blamed. The tragedy is that "the morally best" was not morally good at all, but merely the lesser evil.[29]

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24 On this note, see Rorty 1980, 493, Williams 1981, 28, Taylor 1985, 91, and Baron 1988, 260.
25 Much the same holds for *dirty hands scenarios*. On this note, see Michael Walzer's seminal paper: Walzer 1973, and Jean-Paul Sartre's play *Les mains sales*: Sartre 1948, as well as Rynard/Shugarman 2000. For a current overview on the topic, see Coady 2009. Cp. also Kühler 2012a, ch. 13.
26 The example is based on William Styron's novel of the same name: Styron 1979. See especially Greenspan 1983, who was the first to mention this example within the philosophical debate on moral dilemmas.
27 On this note, see especially Gowans 1994, who focuses on such *inescapable moral wrongdoing*.
28 Cf. De Wijze 2004.
29 Even if one rejected the background assumption of a clear distinction between obligation dilemmas and prohibition or tragic dilemmas at this point, i.e. if one argued for the thesis that *all* dilemmas are either obligation dilemmas or prohibition dilemmas, the result would merely be that either agent regret or tragic remorse would *always* be appropriate. The main line of argument presented here would thus still remain intact.

VIII Conclusion

If the general line of thought I have presented here is to be considered plausible, only a genuinely normative or moral approach to analyzing moral dilemmas proves to be able to provide enough conceptual room to incorporate the emotional moral remainder adequately and in enough detail. Accordingly, only a genuinely normative or moral approach is capable of taking the applied worry about the emotional moral remainder of agents facing moral dilemmas seriously enough so that a coherent comprehensive position can be formulated, incorporating convincingly the perspectives of both applied ethics and theoretical ethics in this context.

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