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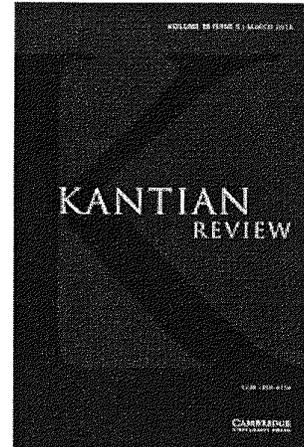
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Can Positive Duties be Derived from Kant's Formula of Universal Law?

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Abstract

According to the standard reading of Kant's formula of universal law (FUL), positive duties can be derived from FUL. In this article, I argue that the standard reading does not work. In the first section, I articulate FUL and what I mean by a positive duty. In the second section, I set out an intuitive version of the standard reading of FUL and argue that it does not work. In the third section, I set out a more rigorous version of the standard reading of FUL and argue that even this more rigorous version does not work.

Keywords: Kant, Kantian ethics, Kantian practical philosophy, universalizability tests, universalizability, formula of universal law, obligations

1. Introduction

According to the standard reading of Kant's formula of universal law (FUL), positive duties can be derived from FUL. In this article, I argue that the standard reading does not work. FUL is the first formulation of the categorical imperative (CI) to which Kant introduces us in the *Groundwork for a Metaphysics of Morals*.¹ It runs as follows:

Act only according to that maxim by which you can at the same time will that it should become a universal law. (G, 4: 421)

The test proposed here is to see whether I can will that my maxim (in any given instance) can become a universal law. That is, according to FUL, willing the universalized version of my maxim ought to be consistent (in some as yet unspecified way) with willing the maxim itself.

Looking at FUL, one sees that it starts with the expression ‘act only’ (*handle nur*). If I tell you to act only according to maxims that have some property X, then I am telling you that all of your maxims better have that property. In other words, FUL says that if an agent acts on a maxim that cannot at the same time be willed as a universal law, then that agent is acting impermissibly, and if an agent acts on a maxim that can at the same time be willed as a universal law, then that agent is acting permissibly.²

A positive duty can be understood by contrasting it to the notion of a negative duty. Agents have a negative duty just in case adopting some maxim X is impermissible. By way of contrast, agents have a positive duty just in case adopting some maxim X is obligatory. And if adopting a maxim is obligatory just in case not adopting that maxim is impermissible, then agents have a positive duty just in case not adopting some maxim X is impermissible.³

In this article I shall argue that there are no positive duties that follow from FUL. There are no maxims or ends that, according to FUL, it would be impermissible not to adopt. Positive duties cannot be derived from FUL, for FUL only can rule things out. FUL can proscribe, but it cannot prescribe. FUL cannot generate any positive duties. This is my claim.

My claim should not be confused with saying that FUL is an empty formalism.⁴ I am not saying that FUL does not tell us anything about maxims; I acknowledge that FUL distinguishes forbidden maxims from permissible maxims. Similarly, my claim should not be confused with the objection that FUL has false positives and/or false negatives. That is, I am not saying that there are maxims that are intuitively impermissible that pass FUL or that there are maxims that are intuitively permissible that do not pass FUL. Finally, my claim should not be confused with the idea that FUL cannot distinguish between perfect and imperfect duty by means of the so-called contradiction in conception test and the so-called contradiction in willing test.⁵ What I am saying comes into play prior to the distinction between perfect and imperfect duty. One can understand my claim without understanding the distinction between perfect and imperfect duty.

It is a direct corollary of my claim that FUL does not condemn agents for not adopting maxims. If no maxims are obligatory, then agents do something that FUL would condemn them for only if they adopt a

maxim that is impermissible. That is, in trying to determine whether an agent has done something wrong, FUL would not have the resources to condemn an agent for not adopting any maxims; it would be able to condemn agents only for adopting impermissible maxims.

The argument for my claim will proceed in two stages. First, I shall look at an intuitive way of deriving positive duties from FUL. Second, I shall consider a more rigorous way of deriving positive duties from FUL. Both of these ways of deriving positive duties from FUL are taken from the secondary literature and are documented as such. I refer to them as the intuitive and the rigorous versions of the standard reading of FUL, respectively. I shall argue that neither of them works.⁶

2. The Standard Reading, Intuitively Considered

According to the standard reading, determinate obligations to adopt certain maxims or perform certain actions follow from FUL.⁷ In this section I shall be concerned with an intuitive version of the standard reading.⁸ If a maxim passes the test proposed in FUL, the maxim is permissible. But, according to the standard reading, if the maxim fails the test, then agents have a duty. If the maxim fails the test, agents have the duty of doing the opposite of what the failed maxim says. Or, more precisely, agents have a duty to adopt the opposite of what the maxim says as a law.⁹

An example will make this clearer. Consider Kant's treatment of the lying promise (*G*, 4: 422). A man in financial difficulties considers getting ready money by using a lying promise to repay. His maxim is, "I will make a lying promise in order to get some ready money." In order to determine whether he could will his maxim to be at the same time a universal law, he goes through the following thought experiment. He imagines a world in which everyone who needs money makes a lying promise. Further, he imagines that he is part of this world and willing his maxim. The question that FUL tells him to ask is whether he can will this whole state of affairs.

Now his maxim is derived from a hypothetical imperative. The hypothetical imperative is: 'if you will to get some ready money, then make a lying promise'.¹⁰ This hypothetical imperative is derived from the rational principle that whoever wills an end wills the necessary means conjoined with the belief that lying promises are a means to the possession of ready money.¹¹

However, in the world in which the man's maxim is universalized, lying promises are not a means to getting ready money. If everyone tries to obtain ready money by means of a lying promise, then 'no one would believe what was promised to him but merely would laugh at any such assertion as vain pretense' (*G*, 4: 422). Thus, in the world in which the man's maxim is universalized, his belief that lying promises are a means to the possession of ready money is false. Thus, if the man's maxim were universalized, the hypothetical imperative from which it is derived no longer holds, which undermines his own maxim. The man cannot will his maxim at the same time as a universal law because to do so would be to will away the very means that make the maxim effective in the first place. In willing his maxim at the same time as a universal law, he would be committing a practical contradiction. He would be willing both X (that a lying promise be the means of obtaining ready cash) and not-X (that a lying promise not be the means of obtaining ready cash).

It is at precisely this point that the standard reading makes a crucial and unwarranted jump. According to the standard reading, because the maxim to make a lying promise in order to get some ready money fails FUL, agents have a duty to adopt the opposite of this maxim as a law. In particular, agents have a duty to make promises in good faith, if they make promises at all. But this does not follow. What FUL shows on this reading is that, as a matter of fact, the man in the example cannot will the maxim under consideration as a universal law. He cannot do so because, as a matter of fact, willing his maxim commits him to willing that the practice of promise keeping be in good, working order. The argument does not show that the man should or ought to will any given maxim, much less that he should or ought to will the maxim, 'only to make promises in good faith'.

As pointed out above, FUL is a test of permissibility. In other words, given a set of maxims and assuming that there is a philosophically viable interpretation of what it means to be able to will a maxim as a universal law, the only way to show that one of those maxims is obligatory is to show: (1) that an agent necessarily adopts one of the maxims in the set,¹² (2) that the one maxim purported to be obligatory is permissible and (3) that every other maxim in this set is impermissible. But the intuitive version of the standard reading does not show any of this. The intuitive version of the standard reading does not show that an agent necessarily adopts either the maxim 'I will make a lying promise in order to get some ready money' or the maxim 'to make promises in good faith, if I make promises at all'. Similarly, the standard

reading considered here does not show that the maxim 'to make promises in good faith, if I make promises at all' is permissible. Finally, the standard reading considered here shows (3) only if one assumes that (1) could be shown to be true.

(2) is not worrying in this case. But a lot of weight is being put on (1), and (1) seems to be not merely false; it seems to be obviously false. Here are some other maxims about lying promises that an agent could adopt. An agent could adopt the maxim, 'to make a lying promise in order to get someone to go away'; 'to make a lying promise in order to save a life'; 'to make a lying promise in order to win an election'; 'to make a lying promise in order to stop a genocide'; 'to make a lying promise in order to surprise someone'. Here are some other maxims the agent in the example could adopt to get some ready money. The agent could adopt the maxim, 'to rob a bank to get some ready money'; 'to kidnap the child of an executive at Goldman Sachs to get some ready money'; 'to buy a lottery ticket to get some ready money'; 'to make and sell a get-rich-quick video to get some ready money'; 'to mug every third person coming out of the grocery store to get some ready money'.

If one is limited, it is by one's imagination and by the fact that the exercise of coming up with alternate lying-promise-maxims or alternate ready-money-maxims is not very rewarding. But the point is not merely that (1) is (obviously) false. The point is that there are infinitely many maxims (indeed, uncountably infinitely many maxims if maxims can mention numbers) that one could adopt when it comes to lying promises or promises in good faith. There is no way that the intuitive version of the standard reading even can get off the ground. *No human ever will be in a position to test (uncountably) infinitely many maxims, so no human ever will be in a position to derive a positive duty to adopt maxim X using the intuitive standard reading of FUL.*

3. The Standard Reading Reconsidered, the Logical Account

In setting out the intuitive version of the standard reading of FUL, I appealed to the notion of the opposite of a maxim. The basic idea behind the standard reading of FUL was that, if a maxim fails FUL, then there is a (positive) duty to adopt the opposite of this maxim as a law. Upon reflection, the notion of the opposite of a maxim or an action might seem a bit strange or perhaps a bit extreme. It might seem strange because it is not clear what to make of the idea of the opposite of a discursive principle. Maxims and actions, unlike

numbers, do not have magnitude. So what could the opposite of a maxim or an action be? The notion of the opposite of a maxim or an action might strike some as extreme because someone might think that doing the extreme opposite of something impermissible is not required; what is required is a sort of mean between two extremes.¹³

In this section I shall consider a more rigorous version of the standard reading. This version of the standard reading should be seen as a refinement of the more intuitive version. According to the more rigorous version of the standard reading of *FUL*, agents have a duty to adopt the contradictory (not the opposite) of a maxim that fails *FUL*.

Now two terms are contradictories if and only if one or the other must apply to a thing, but both cannot. For example, 'alive' and 'lifeless' are contradictories because everything is either alive (has life) or lifeless (lacks life), but nothing is both. Applying this idea to maxims, we can say that two maxims *X* and *Y* are contradictories if but only if, for all agents *Z*, *Z* adopts *X* or *Y* but not both. Because contradictories always come in pairs, there are four possibilities when it comes to considering whether a maxim or its contradictory is universalizable:

1. If a maxim and its contradictory are universalizable, then the maxim is permissible.
2. If a maxim is universalizable and its contradictory is not, then the maxim is obligatory.
3. If a maxim is not universalizable and its contradictory is, then the maxim is impermissible.
4. If neither a maxim nor its contradictory is universalizable, then the maxim is permissible.

This account sidesteps the positive duties objection by the following line of thought. Consider the maxim 'never to help anybody'.¹⁴ This maxim is not universalizable. However, the contradictory of this maxim, the maxim 'to help some others sometimes', is universalizable. Because 'never to help anybody' and 'to help some others sometimes' are contradictories, all agents adopt either one or the other. This much follows from the notion of a maxim contradictory. Thus, if 'never to help anybody' is impermissible and 'to help some others sometimes' is permissible and these two maxims are contradictories, then 'to help some others sometimes' is obligatory.¹⁵ This account thus makes an ineliminable appeal to the notion of a maxim contradictory. But is the notion of a maxim contradictory well-defined?¹⁶

Scepticism about the notion of a maxim contradictory might take root by considering the fourth condition. The fourth condition is about the case in which neither a maxim nor its contradictory is universalizable. It is widely agreed that the class of non-reciprocal action maxims, such as 'to buy trains but never to sell them', fall under this description (i.e. neither they nor their contradictories are universalizable).¹⁷ But not all maxims of non-reciprocal actions are intuitively permissible. Consider 'to kill but not be killed' or 'to stab but not be stabbed' or, more gruesome, 'to eat but not be eaten' or 'to skin but not be skinned'. All four of these maxims are maxims of non-reciprocal action; all four fail FUL as do their contradictories. But I think none of them is intuitively permissible.

A proponent of the standard account might try to argue that all maxims of non-reciprocal actions are impermissible.¹⁸ The proponent of the standard account might concede that, if condition 4 in the account above is reformulated accordingly, we might have to look hard at our intuitions about supposedly innocuous non-reciprocal action maxims. But s/he also might point out that reformulating condition 4 in this way would make the account quoted above less of an extrapolation from Kant, for it would not make it permissible to act on some maxims that are not universalizable.¹⁹

But this kind of reformulation of condition 4 does not work. The whole point of referring to maxim contradictories is that all agents either adopt a maxim or the contradictory of a maxim. It follows immediately that, unless a proponent of the standard reply does not mind claiming that all agents behave so as to violate FUL *at all times and regardless of whether they want to*, condition 4 cannot be reformulated as suggested.

The line of objection that I am considering can be developed from here in two directions. One might concede that positive duties can be derived from FUL (by means of condition 2) but argue that the standard account is highly suspect insofar as it makes it permissible to adopt the maxim 'to skin but not be skinned'. Alternatively, one might argue that the line of objection I am considering reveals something deeply troubling about the notion of a maxim contradictory. One might argue that the notion of a maxim contradictory is not well-defined. This is the line of thought I shall pursue in the remainder of this section. If I am correct, then the standard account of how to derive positive duties from FUL fails.

I suspect that the argument about the maxim ‘to help some others sometimes’ seems plausible (if it does seem plausible) because this maxim is so general. According to condition 2, this maxim is obligatory because its contradictory (‘never to help anybody’) is not universalizable. In order to see the problems with the notion of a maxim contradictory, consider a maxim that is not so general. There plainly are plenty of maxims that have to do with helping other than these two. Consider the maxim ‘never to help a Nazi to exterminate Jews’ and its putative contradictory, ‘to help some Nazis sometimes to exterminate Jews’.

In this case, condition 2 would render it obligatory to adopt the maxim ‘never to help a Nazi to exterminate Jews’. The trouble is that many agents do not know what a Nazi or a Jew is. Moreover, even agents who know about the Holocaust but for whom it is a thing of the past do not seem to adopt either the maxim ‘never to help a Nazi to exterminate Jews’ or the maxim ‘to help some Nazis sometimes to exterminate Jews’.

This objection, like the last, could be filled out in two ways. One could point out that it is impermissible for an agent for whom the Holocaust is a thing of the past or for an agent unfamiliar with the Holocaust to adopt the maxim ‘to help some Nazis sometimes to exterminate Jews’. But one might argue that such an agent does not have any positive duty to adopt the maxim ‘never to help a Nazi to exterminate Jews’. Thus, one might conclude that the standard account has counterintuitive results. But this is not the line of objection I want to push.

The line of objection I want to push is that some agents adopt neither the maxim ‘to help some Nazis sometimes to exterminate Jews’ nor the maxim ‘never to help a Nazi to exterminate Jews’. The claim is not that such agents are good or bad but that they are logically possible. And if such agents are logically possible, then these two maxims are not contradictories after all, for the notion of a maxim contradictory trades on the idea that all agents adopt either a maxim or its contradictory. And, to wind things up, if these two maxims are not contradictories, then the standard account does not render obligatory the maxim ‘never to help a Nazi to exterminate Jews’.

At this point, there is a variety of ways in which a proponent of the standard account might reply. Someone might argue that the considerations about the helping maxims just discussed do not get off the ground, for any rules that could be involved are not general enough to

qualify as maxims. The idea behind such an objection could be that 'maxims are those underlying principles or intentions by which we guide and control our more specific intentions'.²⁰ Because helping or not helping the Nazis to exterminate Jews seem like specific intentions, perhaps one could make the case that maxims have not come into play here. That is, neither the supposedly non-universalizable maxim 'to help some Nazis sometimes to exterminate Jews' nor the supposedly universalizable contradictory of this maxim is a maxim properly speaking. Both of them are mere rules. But FUL applies to maxims; it does not apply to rules. Thus, nothing said in this example makes contact, for nothing in this example is about maxims. So the notion of a maxim contradictory has not been undermined.

To take on such an objection here would be too difficult. I am not going to try to articulate a theory of maxims. I point out simply that if the objection being raised against my argument is that FUL applies to rules rather than maxims, then the onus is on the objector to explain how to distinguish rules from maxims. What counts as too little generality? What counts as enough? On any plausible account of maxims, whether they are 'underlying intentions' or not, surely the principle 'never to help a Nazi to exterminate Jews' would count as a maxim.²¹

The proponent of the standard account might try a different line of attack. S/he might argue that the fact that an agent does not know what a Nazi or a Jew is, or the fact that for some agents the holocaust is a thing of the past, does not show that s/he does not have the maxim 'never to help a Nazi to exterminate Jews'. The idea underlying such an argument might be that, in order to determine whether an agent has a maxim, one must engage in counterfactual reasoning.²² In this case, the relevant counterfactual question would be: Would an agent ever help a Nazi to exterminate Jews if s/he were in a position to do so? If the answer is no, then s/he had the maxim 'never to help a Nazi to exterminate Jews' all along.

Again, to deal thoroughly with such an objection would be too difficult. But it seems to me that the counterfactual reasoning, if it shows anything (and it is not clear to me that it does), shows that the agent who, if s/he were in a position to do so, would not help the Nazis is a good person. It does not show that s/he has adopted the maxim 'never to help a Nazi to exterminate Jews'. S/he probably would have adopted this maxim if s/he had been confronted with a situation in which it was relevant, but the point is that s/he is not confronted with such a

situation, s/he does not know about the Holocaust (or it is a thing of the past), hence s/he never adopted the maxim. If the standard account rests on the thought that agents who existed before the twentieth century can be said to have adopted either the maxim ‘never to help a Nazi to exterminate Jews’ or the maxim ‘to help some Nazis sometimes to exterminate Jews’, then it seems to me that the standard account is relying on a highly dubious idea of what it is to adopt a maxim. And it is not clear to me how the standard account could not rest on this thought since, as pointed out above, it rests on an ineliminable appeal to the notion of a maxim contradictory.

To put this quite generally, the standard account faces a dilemma. Either it gives up on the notion of a maxim contradictory (and with it the ability to derive positive duties from FUL), or it (1) makes the test proposed by FUL insensitive to culture and upbringing and (2) *assumes that agents can act in accordance with maxims that they cannot articulate either consciously or unconsciously for the simple reason that the concepts involved in the maxims are not ones with which they are familiar.*

As a last-ditch effort, the proponent of the standard account might argue as follows. S/he might concede that the notion of a maxim contradictory is ill-defined. But s/he might claim that some maxims have contradictories. Some maxims are very general and very basic. For example, the maxim ‘to help some others sometimes’ is very basic. Perhaps for this maxim, it can be said that it has a contradictory, namely, ‘never to help anybody’.

The problem with this argument is that it relies on the following line of thought. In order to determine whether maxim X is obligatory, one will have to figure out (1) whether X is universalizable, (2) whether there is a contradictory of X and (3) whether the contradictory of X is universalizable. It will not be until one has determined the answers to all three of these things that one will be in a position to assert that some maxim is obligatory. And plainly (2) is not something that is going to be easy to determine.

Indeed, it is by no means obvious that ‘to help some others sometimes’ does have a contradictory, much less that this contradictory is ‘never to help anybody’. It seems possible for there to be agents who have adopted the maxim, ‘to help everybody as much as I can’ without having adopted either the maxim ‘to help some others sometimes’ or

the maxim 'never to help anybody'. In point of fact, it is not clear whether an agent who has adopted the permissible maxim 'never to help the Nazis to exterminate the Jews' has adopted either the maxim 'never to help anybody' or the maxim 'to help some others sometimes'.²³

Precisely because the maxim 'to help some others sometimes' is so general, indeed so vacuous, it seems *prima facie* unlikely that any agent ever has adopted it. And precisely because the maxim 'never to help anybody' is so general and would be so difficult to live by, it seems *prima facie* unlikely that any agent ever has adopted it, either. *So far from being maxim contradictories, these two maxims seem artificial and caricatured, unlikely ever to have been put in use by any agents whatever.*

Proponents of the standard account might try one last dodge. They might argue that, when they are talking about deriving positive duties, implicit in this is an appeal to the so-called 'context of deliberation'. The idea here would be something like this. Suppose an agent is presented with the issue of promise keeping. Such an agent will view him/herself as required to keep his/her promises or not. If s/he accepts the first option, s/he believes that s/he ought always to keep his/her promises, whence we may infer that s/he adopts the maxim, 'never to break promises'. If s/he accepts the second option, s/he believes that it is not the case that s/he ought always to keep his/her promises, whence we may infer that s/he adopts the maxim 'to break some promises sometimes'. These maxims are not contradictories; an agent will adopt one or the other only if s/he is presented with the issue of promise keeping. But if s/he is presented with the issue of promise keeping, then s/he must adopt one of these two maxims: how could s/he not? So if one of these two maxims is permissible and the other is impermissible, then the permissible one must be obligatory.

However, this objection does not work. In the context of deliberation or not, enthymematic or not, nothing is changed.²⁴ In order to demonstrate that a maxim is obligatory using a permissibility test, one must show: (1) that the maxim is permissible, (2) that the maxim is a member of a set of maxims, of which an agent necessarily adopts some, and (3) that all the other maxims in the set are impermissible. This is a simple logical point. The objection just raised fails at (2): the two maxims considered ('never to break promises' and 'to break some promises sometimes') are not shown to be the only members of a set of

maxims of which an agent necessarily adopts some. This is particularly pressing because, in the context of deliberation, it seems unlikely that any agent ever adopts either of these maxims. Rhetorical questions aside, when confronted with the issue of promise keeping, most agents remain unsure about what they ought to do in all conditions. Perhaps some agent is sure that this promise *now* in *these conditions* ought to be kept, and perhaps s/he can articulate a reason for this. But that is quite consistent with remaining in aporia about whether promises ought always to be kept in general (under all conditions). And remaining in aporia about this and adopting merely the maxim ‘to keep this promise now’ is *not* the same as adopting a maxim ‘to break some promises sometimes’. So the objection and the example used to illustrate it fall flat.²⁵ Appealing to the deliberative field, so far from being a crutch on which to rest derivations of positive duties, seems to weaken the standard account, for the paradigmatic obligatory maxim used to illustrate the standard account is the maxim ‘to help some others sometimes’. But, as I pointed out above, it is unlikely that any agent ever actually considers this maxim as a potential policy during deliberation, much less adopts it.

I conclude that the standard account fails in its attempts to demonstrate that positive duties follow from FUL. The standard account fails in the general case, for the notion of a maxim contradictory is ill defined. And the standard account fails in the specific case, for the maxims it considers are not contradictories at all. They are not even serious options for deliberation; ‘to help some others sometimes’ is too insipid and ‘never to help anybody’ too capacious.

Notes

- 1 First in part I at *G*, 4: 402 and again in part II at 4: 421. All references to Kant’s work are to the Akademie-Ausgabe pagination; all translations are taken from *The Cambridge Edition of the Works of Immanuel Kant*.
- 2 Aune argues that, strictly speaking, only the first of these two conditionals follows from FUL (Aune 1980: 46–7). His reasoning seems to be that ‘act only according to that maxim by which’ is rendered most plausibly as ‘acting on maxim M is permissible only if’.
- 3 My use of the terms ‘positive duty’ and ‘negative duty’ parallels one use of the terms ‘duty of commission’ and ‘duty of omission’ but unlike them does not also cover general duties.
- 4 The most famous articulation of this objection seems to be Hegel’s (see e.g. Hegel 1991: §135). For a detailed historical account of how Hegel’s version of this objection changed through time, see Wood (1990: chs 8–9).
- 5 Following the terminology introduced first, I believe, in Nell (O’Neill) (1975). Note that the contradiction in conception test and the contradiction in willing test are articulated for Kant’s formula of a universal law of nature, not for FUL itself (*G*, 4: 424).

- 6 My argument should not be taken as an objection to Kant. First, it is not clear that Kant uses FUL in the way that the standard reading does. Second, it is not clear that positive duties are necessary. My argument should be taken as an objection to the standard reading insofar as it purports to do something it cannot.
- 7 I call this the standard reading because it occurs repeatedly throughout the secondary literature. For a small cross-section, see e.g. Guyer (2006: 194); Guyer (2007: 143); Harrison (1967: 231); Kemp (1967); Kitcher (2004); Paton (1971: 142); Pogge (1998); and Stratton-Lake (2000: 50). When not expressed explicitly, the content of the standard reading often is assumed, tucked in the folds of many accounts. For example, some authors argue that because a maxim to do X (e.g. a maxim to injure) is non-universalizable, agents have an obligation to adopt a maxim to reject X (see e.g. O'Neill 1996: 165–6). But an obligation to adopt a maxim to reject X seems altogether different from an obligation not to adopt a maxim to do X. There does not seem to be any way of generating this obligation to adopt a maxim to reject X without tacitly appealing to something like the standard reading. The claims in the last two sentences are explained in more detail in the body of the article.
- 8 The standard account in this section is lifted almost word for word from Korsgaard (1996: 63–4).
- 9 Again, my reconstruction of the standard reading in this section is lifted almost word for word from Korsgaard (1996: 63–4). The actual text runs: 'it is only if a maxim fails the test that we get a duty – the duty of doing the opposite of what the failed maxim says, or, more precisely, of adopting the opposite of what the maxim says as law'.
- 10 Again, the last few sentences are lifted almost word for word from Korsgaard (1996: 63–4). My goal is to build up the standard account to the point where it infers positive duties from FUL. Any problems with it prior to that inference are immaterial for my purposes.
- 11 I am assuming a view of how the test in FUL works in order to illustrate how the standard reading works. It is a matter of fact that Korsgaard, from whose work this intuitive version of the standard reading is taken, subscribes to the practical contradiction interpretation of FUL. However, nothing that I say here should be taken either in support of or as criticism of the practical contradiction interpretation.
- 12 This necessity is not a normative (ought) necessity. It is logical necessity.
- 13 Discussing the maxim 'never to help anyone', Guyer distinguishes between the contradictory of this maxim and its 'extreme opposite'. He claims that the contradictory of this maxim is 'to help some others sometimes'. He claims that a duty 'to help everyone else all the time' would be 'the extreme opposite of the maxim of never helping anyone' and he points out that 'neither Kant nor anyone in his right mind wants to argue for a duty like that' (Guyer 2007: 144).
- 14 I take this example from Herman, who argues that 'if the CI procedure shows that it is impermissible to adopt the maxim, "to never help anyone," it follows that we must adopt its contradictory, "to help some others sometimes"' (Herman 1993: 63).
- 15 This line of thought is expressed explicitly by Guyer:

[J]ust as the falsity of one statement implies the truth of its contradictory, e.g. "It is false that it is raining today" implies "It is true that it is not raining today," so it would seem that the impermissibility of adopting one maxim does imply the necessity of adopting its contradictory, thus the impermissibility of the maxim of never helping anyone does imply the necessity of the maxim of helping somebody sometime. (Guyer 2007: 143)

- 16 Some commentators rely on the idea of an action contradictory rather than that of a maxim contradictory. One such commentator is Stratton-Lake. Stratton-Lake points out that FUL is merely a test of permissibility, which seems to raise a problem for generating obligatory maxims (Stratton-Lake 2000: 50). He argues that this problem can be solved as follows:

[I]n relation to obligatory acts, we can understand it as doing what one should just because the maxim of the contradictory act cannot be universalized. For the sake of simplicity, let us call maxims of obligatory actions, i.e., those acts whose contradictory expresses a maxim which cannot be willed as a universal law without contradiction, ‘lawlike’ maxims. The term ‘universally valid maxim’ will be reserved solely for the maxim of merely permissible actions, i.e., those whose maxim is universalizable, and where the maxim of the contradictory act is also universalizable. (Stratton-Lake 2000: 50)

I shall not address Stratton-Lake’s account in the text. I do think, however, that the notion of an action contradictory is as ill defined as the notion of a maxim contradictory, and I also think that even overlooking this ill defined concept, Stratton-Lake’s account seems to rely on the assumption that any given action can be performed on only one maxim. This assumption is false. Moreover, the fact that it is impermissible for me to break a promise on one maxim (e.g. ‘to break a promise if doing so would be convenient’) does not show that it is impermissible to break a promise on another (e.g. ‘to break a promise if not doing so would require me to debase myself’). So although I do not discuss Stratton-Lake’s account explicitly, I think that enough will have been said by the end of this section to see why it does not work.

- 17 It is an open question – and one that I shall not address here – whether the notion of a ‘non-reciprocal action’ maxim can withstand close scrutiny. I suspect that it cannot; however the point is not particularly important for my purposes here and I shall not press it.
- 18 An argument along these lines can be found in Timmermann (2007: appendix C).
- 19 Nell admits that condition 4 is an extrapolation from Kant in Nell (O’Neill) 1975: 77.
- 20 O’Neill 1989: 84.
- 21 The idea that maxims are general or underlying principles can be found in Bittner (1974); Höffe (1979); O’Neill (1989: chs 5, 7 and 8); Wood (2008: 143). Criticism of this idea can be found in Allison (1990: 93) and Loudon (1986). An alternate account, according to which maxims are embodied by specific intents, can be found in Nell (O’Neill) 1975: ch. 3 and, it seems, in Kitcher (2003). Criticism of this idea can be found in O’Neill (1989: 87) and Timmerman (2007: 157).
- 22 See e.g. O’Neill (1989: 84–5). O’Neill attributes this idea (the idea that one can determine an agent’s maxim by means of counterfactual reasoning) to Kant, citing G, 4: 398–9. She calls instances of such counterfactual reasoning ‘isolation tests’. Paton argues that, in the passage from G, 4: 398–9, Kant is trying to isolate our intuitions about acting from duty. That is, according to Paton the idea in the passage cited seems to be that, if one compares actions performed from self-interest, from immediate inclination or from duty, then one will see that only the actions performed from duty have true moral worth (Paton 1971: 47–8).
- 23 A proponent of the standard account might want to argue that any permissible maxim about helping implies the maxim ‘to help some others sometimes’, thus any agent who adopts a permissible maxim adopts the maxim ‘to help some others sometimes’, thus

the maxim 'to help some others sometimes' is obligatory; to adopt any maxim that does not imply the maxim 'to help some others sometimes' is impermissible. However, there are three problems with this argument. First, I am not convinced that any meaningful content can be given to this notion of implication. Second, even if meaningful content could be given to this notion of implication, I see no plausible argument for the claim that, if I adopt maxim X and maxim X 'implies' maxim Z, then I (*eo ipso*) adopt maxim Z. Third, even if there were a plausible argument for this claim, the maxim 'never to help the Nazis to exterminate the Jews' is an example of a maxim that surely does not 'imply' the maxim 'to help some others sometimes'. Thus this talk of implication seems destined for a dead end. It is not clear whether the notion of implication used here makes any sense; it is not clear whether the notion of implication has any bearing on the maxims an agent adopts; and it is clear that, even if it did make sense and even if it did have a bearing on the maxims an agent adopts, it begs the question insofar as it simply assumes that all permissible helping maxims entail adopting the maxim 'to help some others sometimes'.

- 24 I am grateful to a commentator from *Kantian Review* for pressing me to clarify this point.
- 25 I suppose the objection might be retooled so that the maxims in question are 'to keep some promises sometimes' and 'to break some promises sometimes'. The trouble here is that an agent could adopt both of these maxims at the same time (they are neither contradictories nor contraries) and, most likely, neither of them at any given time (even if faced with the issue of promise keeping (see my comments in n. 16)). Moreover, both of these maxims seem intuitively to be permissible (it is hard to imagine Kant or any right-minded Kantian thinking that I ought to keep a promise to meet someone for lunch at 3pm if the only way for me to do so would require me to run my car through a group of school children at high speed). It follows immediately that, even if these two maxims were such that an agent were in a situation in which s/he necessarily must adopt one or the other (such a situation is difficult to imagine, but possible), both are permissible, so neither is obligatory. So there is no positive duty here: even the retooled objection does not work.

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