A Fact, As It Were: Obligation, Indifference, and the Question of Ethics

Abstract

According to Immanuel Kant, the objective validity of obligation is given as a fact of reason, which forces itself upon us and which requires no deduction of the kind that he had provided for the categories in the *Critique of Pure Reason*. This fact grounds a moral philosophy that treats obligation as a good that trumps all others and that presents the moral subject as radically responsible, singled out by an imperatival address. Based on conceptions of indifference and facticity that Charles Scott has articulated in his recent work, I argue that these broadly Kantian commitments are mistaken. More specifically, I argue that the fact of obligation is given along with a dimension of indifference that disrupts the hierarchical relation between moral and non-moral goods and that renders questionable the unconditional character of responsibility.

There is a lineage of thought that begins decisively with Immanuel Kant, and that is carried forward in different ways by Emmanuel Levinas, Jean-François Lyotard, John D. Caputo, and many others, that understands ethical experience as grounded in the phenomenon of obligation. For all of these thinkers, obligation is irreducible: we cannot adequately account for our being obligated in terms of what Kant would call theoretical reason or what Lyotard would call cognitive phrases.[1] We cannot, in other words, deduce a prescription from a description, an ought from an is. No obligation whatever is entailed by such descriptions as that we are transcendentally free, that we are God's creatures, or that we were born into communities with more or less settled values. Such descriptions always arrive on the scene too late, as attempts to make sense of the obligation that we already experience. For all of these thinkers, then, obligation is understood as a kind of fact that "forces itself upon us" and that requires no deduction to establish its legitimacy.[2] As practical subjects, we find ourselves having been subjected to this fact always already. Genuinely ethical experience happens as a response to, and as a responsibility for, this unknowable and incommensurable fact, which is closer to the subject than the subject is to itself.

Charles Scott's work on ethics is not a part of that lineage. Although a large percentage of Scott's work addresses issues in ethics broadly construed, he has had very little to say specifically about the phenomenon of obligation. To the best of my knowledge, Scott's only sustained treatment of obligation is given in two papers published in 1995 that respond to Caputo's *Against Ethics*.[3] Outside of those two papers, the issue of obligation appears only sporadically and typically in passing. Nonetheless, I believe that Scott's thought has some very interesting and important implications for our understanding of obligation and of its place in ethical experience generally. What I would like to do in this paper, then, is to bring Scott's thought, and especially his articulations of facticity and indifference, to bear on the lineage of thought that treats obligation as basic. I will begin with an attempt to work out as precisely as possible what it means to conceive obligation as a fact. Of course that meaning is far from self evident; there is an extensive body of secondary literature devoted to figuring out what Kant could have meant by the seemingly paradoxical expression "fact of reason." I want to focus specifically on obligation as fact, though, because Scott has a lot of very interesting things to say about facts and how they are given, especially in *The Lives of Things* and *Living with Indifference*. In the second part of the paper, then, I will try to show how Scott's account of the givenness of facts helps to reveal a dimension within the phenomenon of obligation that puts into question the broadly Kantian conceptions of ethical subjectivity and ethical experience that are taken up by thinkers like Levinas, Lyotard, and Caputo. I will conclude with some remarks on what this putting in question means for our understanding of ethical experience and ethical life.

I. Obligation and The Fact of Reason

In order to get a handle on what it means to conceive of obligation as a fact, I would like to begin with a brief description of the philosophical problem to which that conception is proposed as a solution. In the first two sections of his *Groundwork of the Metaphysics of Morals*, Kant develops a determination of the moral law based on what he calls "common rational moral cognition."[4] According to Kant, certain concepts such as good will, obligation, duty, and moral worth are part of our moral common sense; in order to arrive at a precise determination of the moral law, one need only unpack what is contained in those concepts. The first two sections of the *Groundwork*, then, should be understood as "merely analytic."[5] Now it is a part of our moral common sense, Kant thinks, that the only thing good without limitation is the good will. For finite rational beings like us, whose wills are not good simply as a matter of course, the good will is made present in the form of obligation, which is the experience of an unconditional necessitation. The question that Kant is concerned to answer in the first two sections of the *Groundwork* is, "what kind of law can that be, the representation of which must determine the will, even without regard for the effect expected from it, in order for the will to be called good absolutely and without limitation?"[6] Since the goodness of the unconditionally good will cannot be derived from any particular end (since that would render the will's goodness conditional), it can only be the form of lawfulness itself that determines our obligations. And the mere form of lawfulness, of course, is expressed in the Categorical Imperative: "Act only in accordance with that maxim through which you can at the same time will that it become a universal law."[7] Importantly, Kant takes our common sense understanding of good will and obligation at face value for the purpose of determining the moral law. But throughout the first two sections of the *Groundwork,* he

also holds open the possibility that these concepts are "empty delusion[s]" and "chimerical idea[s] without any truth."[8] Although we certainly do experience ourselves as obligated, it remains an open question whether we truly are. As Christine M. Korsgaard has noted, the problem has its origin in reflection: as rational beings, we are able to take a step back from the experienced obligation and to ask whether it is objectively valid. As long as the question of objective validity remains open, the subject cannot recognize herself as genuinely necessitated.[9] In the third section of the *Groundwork*, then, Kant provides a deduction of the objective validity of the moral law. Unfortunately, Kant's deduction fails. At the end of the *Groundwork* we are left, then, only with the knowledge of what the moral law would be, supposing it were objectively valid. We do not yet know the most important thing, namely whether we are actually obligated by it.

In the *Critique of Practical Reason*, published three years after the *Groundwork*, Kant pursues an entirely new argumentative strategy. Instead of attempting a new deduction of the law's objective validity, he cuts the Gordian knot, asserting that "the moral law is given, as it were, as a fact of pure reason of which we are a priori conscious and which is apodictically certain, though it be granted that no example of exact observance of it can be found in experience. Hence the objective reality of the moral law cannot be proved by any deduction, by any efforts of theoretical reason, speculative or empirically supported..;" it is "firmly established of itself."[10] This argument, if one can even call it that, has met with much resistance. Hegel famously characterized the supposed fact of reason as "the last undigested lump in our stomach, a revelation given to reason."[11] Rüdiger Bittner has characterized it as "an ad hoc solution, one that secures a seemingly indispensable premise by means of a doctrine introduced only to this end."

Instead of presenting an argument to defend the objective validity of the moral law, Kant "simply cuts off criticism."[12] And Paul Guyer has similarly suggested that the argument relies "on a good deal of foot-stamping."[13] These sorts of criticisms seem reasonable. Typically, if someone asserts that *x* is a fact, she must be prepared to show her work, to recreate the process of reasoning that yielded the conclusion that *x* is indeed a fact. After all, according to the well-known etymology, a fact is a *factum*, a thing done or made, a result. From this point of view, Kant's insistence that *x* is a fact "firmly established of itself" does indeed look like so much foot-stamping.

Nonetheless, I believe that Kant's argument is worthy of more careful consideration. I want to argue that the doctrine of the fact of reason gives expression to an insight about alterity and incommensurability that comes to play a central role in the thought of such figures as Levinas, Lyotard, and Caputo. To show how this is the case, it will be important to pay close attention to the precise language of Kant's argument. At numerous points, Kant describes the consciousness of the obligating force of the moral law simply as a fact, without qualification.[14] On several other occasions, however, Kant introduces an important qualification: he speaks of a fact *as it were*. Given his repeated use of the qualification "as it were," it seems reasonable to suppose that Kant understood the fact of reason to be somehow different from ordinary facts. The principle of charity requires that we interpret this special kind of fact in the way best suited to solving the problem it is clearly intended to solve, namely the problem of showing that our experience of ourselves as obligated by the moral law is not an "empty delusion." If we disregard the qualification, treating the fact of reason as an ordinary fact, then we are left with the very same problem that Kant had proposed to solve. A fact so conceived would

have to be interpreted in one of two ways: either the obligatory character of the moral law is a fact *of* which we are conscious, or else it is simply a fact *that* we experience ourselves as obligated.[15] On the first interpretation, the fact of reason would be given as the object of our consciousness. That is to say, we would be conscious of the objective validity of the moral law in the same sort of way we are conscious of the fact that grass is green or that the sun rises in the east. This interpretation of the fact of reason, which can be called the "consciousness-of" interpretation, runs into an obvious problem: something can appear as the object of our consciousness without having objective validity. I may be conscious of the stick in the glass of water as bent, for example, but of course it is not. Likewise, I could be conscious of the objective validity of the moral law, but be mistaken. To know whether or not any supposed fact given as an object of our consciousness was objectively valid, we would require a deduction. But of course that is exactly what is supposed to be rendered unnecessary by the fact of reason. The second, "consciousness-that," interpretation fares even worse: it obviously does not follow from the fact that we experience ourselves as obligated that we are actually obligated. In sum, then, the fact of reason can be neither a fact *present to* consciousness nor the *presence of* a certain kind of consciousness to itself. Both interpretations suggest very bad arguments that do not, in any event, address the problem that Kant had meant to solve.

If the fact of reason is to solve the problem left by the failed deduction in Section Three of the *Groundwork*, then it must be understood as present to us in such a way that we cannot step back from it and call into question its validity. Such a conception would solve the problem of reflection that Korsgaard described: there could be no genuine question whether the experience of obligation that it gives is objectively valid because

there would no space for that question to arise. To be a subject at all would be to find oneself subjected to the fact of obligation always already. John D. Caputo suggests such an account of obligation in *Against Ethics*. If we look closely at our real-life, factical experiences of being obligated, we see that the question of deducing its objective validity simply does not arise:

> Does anyone really wait for cognitive reports to come in before concluding that one is obliged? Does one really "conclude" that one is obliged, or does one not just find oneself (*sich befinden*) obliged, without so much as having been consulted or asked for one's consent? Is obligation not a matter of finding oneself from the start, always and already, on the receiving end of commands? Is that not where we are from the start, and hence where we must begin? Is that not just a fact?[16]

We can express this insight in the language of phenomenology by saying that there can be no *epoché* of obligation.[17] We cannot effectively put out of play our subjection to obligations: as Descartes had already recognized, the obligations of daily life continue to press against us even as we undertake the project of universal doubt.[18] Obligation is given first and foremost not as a dubious proposition that stands in need of confirmation, but rather as a singular, utterly incommensurable event. To say that obligation happens as such an event is precisely to deny that it can be validated by a deduction. In Kant's account from the *Groundwork*—and much of this persists in the *Critique of Practical Reason* and beyond—the experience of unconditional necessitation points beyond itself toward the law, which is understood both as the source and the measure of obligation. We are obligated *because* we are under the law, and the law tells us *what* we are obligated to do. But Caputo argues that this gets it exactly backward: the event of obligation has no

"cognitive backup."[19] The principles that we are inclined to think of as the sources of obligation are really just ways of trying to make sense of the experience after the fact. What is first is the event of obligation, which gives the subject as the addressee of a command whose source it cannot know.[20] To find oneself obligated is to find oneself fixed in place in such a way that one cannot step back to make room for reflection. It is, as Caputo puts it, "a kind of Abrahamic *Befindlichkeit*."[21]

II. Facts in a Passing Sense of Transcendence

I find this account of obligation compelling. I agree with Caputo when he writes, summarizing the key insights of this lineage of thought, that "obligation happens…. *Es gibt*: there is obligation (Heidegger). *Il arrive*: it happens (Lyotard). Obligation is a fact, as it were (Kant). Here I am (*me voici*), on the receiving end of an obligation (Levinas)."[22] But I also believe this account misses an important dimension of the lived experience of obligation. I would like to suggest that we can understood this missing dimension in terms of Scott's idea of an excess to meaning that is given with the eventuation of meaningful events, an indifference given with our senses of goodness and obligation. What is this dimension of indifference? How would it affect our sense of obligation if we developed a heightened sensitivity to it? Or perhaps better, how *ought* this dimension to affect our sense of obligation? (I would like to emphasize the "perhaps" here; it may turn out that this is not the better question at all.) In what follows I would like to pursue these questions, focusing specifically on two points: the facticity of the fact of obligation and the subjunctive character of that fact, the "as it were" that seems to be inseparable from it.

I would like to begin with the first chapter of *The Lives of Things*, where Scott describes the way in which facts are given, or at least can, in the right circumstances, be given. He does not address explicitly anything like the Kantian fact of reason here, focusing instead on less "ennobling" or "elevating" facts, e.g., on facts concerning the enormously complex and intricate physiological processes that result in normal human hearing and facts concerning the formation of pimples. The point that Scott wants to argue for is that "facts are as effective as 'poetic experiences' in occasioning astonishment and a sense of wonder."[23] He describes a conversation with two friends, a poet and an artist, who, not surprisingly, disagree: for them, emphasis on facts represents "the very kind of objectivity and scientific rationality that we must resist in order to see things with astonished attention to their lives."[24] I think there is something self-evidently right in the point of view of Scott's friends. All of us who teach in the era of Wikipedia and No Child Left Behind must have some experience with the dulling and flattening of thought that comes with fact-based learning. Students might know, for example, that Nelson Mandela became president of South Africa in 1994, after having spent much of his life imprisoned for opposing apartheid and the government that enforced it. But, at least in my experience, they don't have much appreciation for the inspiring and ennobling values of solidarity, persistence, and unshakeable commitment to justice that this fact represents. There is no wonder at the enormity of the accomplishment of Mandela and of black South Africans generally. It is just a fact, a resource that can be put to use when the occasion demands. This kind of technological, fact-centered mode of being-in-the-world certainly does seem to be seriously impoverished.

While I think there is indeed something importantly right about the poet's and the artist's worries, I also think that Scott is right: facts can be as effective as poetic experience in giving rise to senses of astonishment and wonder. The facts concerning the physiology of human hearing are a case in point: "by means of a package not much larger than a sugar cube, ears hear sounds that are found by transmissions of waves of air pressure, which are transformed into waves of liquid, which in turn produce miniscule movements in tiny hair cells, which excite neurons and bio-electric energy."[25] All of this must happen in order for me to pick out the simplest meanings from the world of sound. But these processes are not a part of the meaning I pick out: when the barista at Starbucks speaks her formulaic sentences to me, I do not take the transformation within my ear of air pressure into waves of liquid as part of the sense to which I must respond. All I need to do is tell her which beverage I would like to order. That apparently very simple meaningful transaction is made possible, not in the Kantian sense, but rather in the most physical way, by an occurrence that is indifferent to my meaningful, worldly projects.

If the poet and the artist are less sensitive than Scott to this astonishing dimension in the givenness of facts, it is probably because they are looking for something else. If there is a dimension in excess of the banal, flat givenness of facts, it ought to be something mysterious; it ought to give a sense of transcendence, a movement toward some kind of "higher," "truer" meaning that puts our everyday, worldly meaning into the right perspective.[26] A genealogical account would be necessary, I think, to explain why people have this expectation about what an excess to the meaning of facts should look like. But for present purposes, it should suffice to note that very many people do in fact have this kind of expectation. I believe that this sense of transcendence profoundly affects

the account of the fact of obligation that is given within the lineage of ethical thought I have been describing. This is most obvious in Levinas, who describes the experience of the face-to-face with the Other in terms of the withdrawn God who is present only in the form of an interpellation. But one can certainly recognize the sense of transcendence in Kant's account of obligation as well: once one has genuinely adopted the moral point of view, he thinks, "one can in turn never get enough of contemplating the majesty of [the moral] law, and the soul believes itself elevated in proportion as it sees the holy elevated above itself and its frail nature."[27] And according to Caputo, obligation "is transcendence itself."[28]

How could we understand the excess of meaning that is given along with facts, including the fact of obligation, if not as a kind of transcendence? On Scott's account, this excess is given as "a dimension of no meaning and hence no order of meaning in ordered meanings' very happenings."[29] There is, in other words, a dimension of no meaning that is co-present with meaningful dimensions of our lives, but without those dimensions belonging to the same space of meaning. It is not the case, for example, that the excessive dimension is "higher," giving us a superior vantage point from which to discern the truth of our everyday lives. Nor is it a dimension of depth, revealing more profound meanings. In both of these cases, the excessive dimension functions to produce new and better meaning. The dimension that Scott is concerned to describe, on the other hand, is not productive in this way; it gives itself as an irreducible indifference to meaning right in the midst of ordinary meaning. In *Living with Indifference*, Scott provides close descriptions of many different ways in which the dimension of

indifference becomes manifest, but for now I would like to focus on Scott's account of trauma. In response to a traumatic event, the body

> produces a prereflective memory trace that can operate as though the past danger were present. The amygdala function apparently knows nothing of place and time and is also a center for instinctive memory. The function of the hypothalamus, on the other hand, provides spatial and temporal context for events. As long as there is cooperation between these two functions a person experiences a traumatic event as past and can remember its emotions in a spatial context as well. It was then at that place. But if there is only amygdalic impression without hypothalamic qualification, the instinctual memory in that dissociation will lack context and the traumatic stress could come to presence at any time or place.[30]

As Kant showed in the Transcendental Aesthetic of the *Critique of Pure Reason*, meaningful experience presupposes the capacity to situate things and events spatiotemporally. One could not form even the most banal judgments of experience—say the judgment that the pen is blue—if one could not first isolate the subject term of the judgment as a single, unified object in space and time. But in severe trauma, the subject finds herself haunted by an "event" that is not submitted to these conditions of meaning. Indeed, from the sufferer's point of view, the cause of the trauma is not even *an* event, since it cannot be mapped onto the coherent order of experience that is made possible by spatiotemporal qualification. The subject tries to make sense of the trauma, integrating it into the order of meaning, but she finds it extraordinarily difficult to do so. "In this case, the body's faceless functioning comes to the fore; good sense and meaning fade away, and a physical dimension without intelligent, spatial, or temporal intention provides the traumatic presentation of a life."[31] The dimension of indifference is just there, stubbornly

present in the midst of other dimensions of the sufferer's day-to-day life, which remain just as meaningful as they had always been.

Of course it is not the case that the dimension of indifference is given only in the experience of trauma. Indeed, its difference from transcendence can be brought out most clearly if we think of the way it is given in the experience of astonishment. According to Scott, astonishment is an event that "exceeds a person's expectations at the moment, comes usually without warning, takes over one's affections, commands attention, surpasses considerably the reach of calculations, is without boredom, and happens exorbitantly with all of the events' meanings and determinations."[32] This dimension of excess does not add new and better meanings to our experience, nor does it cross out, in the Husserlian sense of the term, our familiar meanings. As in the case of trauma, we experience something excessive to meaning right in the midst of meaning.

I believe that Kant, in his discussion of contempt from the *Metaphysics of Morals*, wrote out of a sensibility to this dimension of indifference. According to Kant, "to be contemptuous of others (*contemnere*), that is, to deny them the respect owed to human beings in general, is in every case contrary to duty, for they are human beings."[33] This argument concerning the wrongness of contempt is framed, of course, in explicitly moral language. Remarkably, though, what is called for by Kant's own argument is precisely a suspension of the application of moral conceptuality. The moral goodness or badness of the person with whom we are dealing is given as entirely irrelevant: even if the person has acted in ways that render him utterly unworthy of the most basic respect, we must nonetheless refrain from treating him with contempt. As rational beings for whom pure practical reason is legislative in the domain of freedom, we cannot help judging liars,

gluttons, drunkards, lackeys, and the like to be contemptible any more than we can help judging in the realm of nature that an observed event has a cause. But "the outward manifestation of this is, nevertheless, an offense."[34] There is, it seems, something astonishing that happens in our encounters with others, something that happens exorbitantly to the moral sense that we cannot help applying to their actions and to their lives. This excess of sense does not reverse our established moral sense, such that others' vices appear as virtues and their virtues as vices, nor does it negate or cross that sense out. It does not clarify the law that is given to us by pure practical reason, nor does it help us to apply the law more judiciously. If anything, it renders the application of the law to experience more difficult: what exactly does it mean to manifest contempt, and how can we be sure that we have not done so? The dimension of excess, indifferent to moral sense, is simply co-present with our familiar moral conceptuality. The fact of astonishment, then, functions very differently from the way the fact of reason has typically been understood to function in the second *Critique*. The fact of reason, as we have seen, functioned to secure a very tight bond between our practical activity and the moral law. Specifically, it functioned to rule out any questionability concerning the law's exclusive right to legislate in the moral domain. The fact of astonishment, on the other hand, introduces a gap between ourselves as practical subjects and our own legislative practical reason, and thus loosens the hold of the moral law on our practical being-in-the-world. The sense given by the moral law persists, but it is no longer the only relevant sense, and perhaps not even the predominant sense.

III. Obligation and the Subjunctive Indeterminacy of the Fact of Reason

This conception of facticity, and of the dimension of indifference that happens with it, suggests some important conclusions for our understanding of obligation, understood in the broadly Kantian sense of the term. In what follows, I would like to focus on two of these conclusions. First, I believe that Scott's account of indifference poses a challenge to the idea that obligation is made present most basically as an imperative addressed to the practical subject, singling her out and rendering her unconditionally responsible. Here I would like to turn once again to the "as it were" that qualifies Kant's fact of reason. I believe we can shed much light on the meaning of this qualification by thinking of it in terms of what Scott in *Living with Indifference* calls "subjunctive indeterminacy." According to Scott,

> the subjunctive mood subjoins indeterminacy with a determinate state of affairs and expresses something by reference to an elision, a 'gappiness,' which is said to be in the way something happens. This grammatical trope integrates by signifying an elision of factual literalness and direction in factual events. The subjunctive mood recalls a nonfactual dimension of facts. Or, I could say, the subjunctive mood is a trope that bespeaks a withdrawal of factuality in the occurrence of facts.[35]

In the givenness of facts, including, I think, the fact of obligation, there is something that exceeds the kind of facticity whose sense can be exhausted in declarative sentences. There is given right at the fact a dimension of contingency and open possibility that is not itself a fact. In the subjunctive mood, the fact is a fact as it were, *gleichsam als ein Factum*. In the appearance of subjunctive indeterminacy, there is something exorbitant to the manifest sense of the appearing. But that something is not *a* something "behind" the appearance that can be figured as the ground of that appearance and of its sense, be it

God, the Other, or the moral law within. The subjunctive dimension is neutral, indifferent.

The whole purpose of treating obligation as a fact, as something that requires no deduction to establish its legitimacy, was to put a stop to the process of reflection by which the practical subject could always step back from the felt obligation and ask whether it might not be an empty delusion. Obligation is a fact, as it were, and as such it has a hold on the practical subject always already. To be a practical subject at all just is to be subjected to a call, a command that singles one out, rendering one irreducibly responsive and responsible to that call. This is the idea that Caputo expressed so lucidly in the passage cited above: "one is fixed in place by obligation. You cannot mount it or surmount it, get a distance on it, get beyond (*jenseits*) it, overcome (*überwinden*) it, or lift it up (*aufheben*). It is older than we are, at least as old as Being or Truth or the Sprit or the Will to Power…. Obligation is a kind of Abrahamic *Befindlichkeit*." We cannot get a distance from obligation—we are fixed in place by it—because we are given to ourselves as practical subjects only in its imperatival address. But Scott's account of the subjunctive indeterminacy of facticity suggests a dimension of questionability right at that point where all doubt was supposed to have been eradicated. There is a dimension in the fact of obligation that is indifferent, that does not happen in the accusative case. In the appearing of the fact of obligation, there is a gap, an indeterminate space that opens up between the practical subject and the experienced obligation. Contrary to Caputo's assertion, then, we are not fixed in place by obligation; we can get a distance on it. Right there with the subject as obligated, singled out as the addressee of a demand that comes from who knows where—right there with the experience of the Abrahamic *me voici*—

there is a dimension of subjunctive indeterminacy, of indifferent difference from moral orientation. The practical subject is responsible, then, but not unconditionally; responsible subjectivity happens with a dimension of optionality and questionability that exceed the conceptuality of the ethics of obligation.

In the chapter from *The Lives of Things* titled "Starlight in the Face of the Other," Scott presents his most forceful and direct challenge to the conception of the ethical subject as singled out and as rendered unconditionally responsible by an imperatival address. The chapter presents a critical account of Levinas's account of alterity and the epiphany of the face. According to Levinas, "the face opens the primordial discourse whose first word is obligation, which no 'interiority' permits avoiding."[36] In the face-to-face encounter with the Other, there occurs an upsurge of meaning that exceeds the subject's capacity for appropriation. This disappropriating event happens as the unconditional command, "you shall not commit murder," which singularizes the practical subject, fixing her in place and summoning her to respond.[37] The I, then, is "by its very position, responsibility through and through."[38] The I's subjection to the Other, on this account, is simply a fact: it is given immediately, and cannot be discovered as the conclusion to any chain of reasoning. According to Scott, though, Levinas's account of the facticity of this fact is insufficiently radical, centered as it is on a traditionally phenomenological, identity-based conception of subjectivity. There is a dimension of non-meaning, on Scott's account, that happens right along with the fact of obligation and that is not present in the form of a command addressed to the subject. In the experience of the face-to-face, there is revealed a kinship with a materiality that is radically more other than Levinas's Other, something that "seems to precede and to recede from meaningful

appearances."[39] This materiality is not present as a meaningful ethical command addressed to "me;" we respond to it not as obligated subjects, but rather anonymously and pre-personally, the way fungi or protozoa respond to light.[40] More specifically, when we look into the eye of the other, we find ourselves in the presence of minerals that

> were all formed in the implosion of stars that were trillions of miles and millions of years from where we see[. The] calcium, potassium, sodium, iodine, and phosphorus—all the primary and trace minerals in our eyes—were formed in the unspeakable heat and pressure of stars that collapsed upon themselves and then exploded, sending both light energy and mineral components in an unspeakable tumult throughout the universe.[41]

The stardust in the eyes of the other does not address to us the command "you shall not commit murder," or any other command for that matter. It is too other for that, too far beyond the scope of human understanding. The dimension of non-meaning given in the eyes of the other is simply indifferent to ethical concern.

Once again, this is not to suggest that the dimension of ethical meaning that happens in the face-to-face is completely neutralized by the dimension of indifference that Scott describes. I can report that when I encounter the stranger, the widow, or the orphan, I experience a strong (though not quite unconditional) obligation to help. This feeling of necessitation persists even after I conclude in particular cases that my efforts to help will be ineffective. The point, rather, is just that before the Other, the practical subject is not "responsibility through and through," that there is a distance and a questionability that happen right along with the experienced obligation.

The second feature of the ethics of obligation that is challenged by Scott's account of indifference is the priority it assigns to specifically moral considerations in our

practical lives. Duty, according to this lineage of ethical thought, is given in moral experience as a good that trumps all others. This can be seen especially clearly in a passage from Section 6 of the *Critique of Practical Reason,* just prior to the introduction of the fact of reason. Having just argued for the reciprocity thesis, according to which freedom and the moral law reciprocally imply each other, Kant attempts to determine which of these two functions as the starting point for moral experience: does our consciousness of freedom lead us to the recognition that we are unconditionally obligated by the moral law, or does our recognition of ourselves as unconditionally obligated lead us to the consciousness of freedom? The former possibility is quickly ruled out, as we have no immediate consciousness of freedom in experience. It must be the case, then, that our moral experience begins with our immediate consciousness of the bindingness of the moral law. The law is present to us, according to Kant, as a determining ground of the will that is "not to be outweighed by any sensible conditions."[42] To support his contention that we do in fact experience obligation as trumping all other practical goods, Kant proposes a thought experiment: suppose that a prince demands of his subject that he "give false testimony against an honorable man whom the prince would like to destroy under a plausible pretext."[43] Suppose further that the prince threatens the subject with immediate execution if he should refuse to give the false testimony. Is it possible in this case for the subject to do as the moral law commands, overriding his natural and powerful inclination to preserve his own life? Kant believes that the answer is obviously yes. That is not to say, of course, that the subject would in fact perform his duty. The important point, though, is that the subject would certainly recognize himself as being able to do it. He can because he ought. *That* he ought is not an open question; his

consciousness of his obligation is what, a page later, will be called the fact of reason. To be conscious of the bindingness of obligation, then, just is to be conscious of that obligation as overriding all non-moral goods, including the good of life itself.

In Chapter Three of the second *Critique*, "On the Incentives of Pure Practical Reason," Kant describes in greater detail how it comes to be that non-moral goods are given as trumped by the demands of duty. Things or states of affairs are presented to us as good, in the non-moral sense of the term, by our inclinations. As finitely rational beings, we cannot help experiencing the inclinations as making claims on us, as providing what purport to be compelling reasons to pursue particular courses of action. Following the lead of the inclinations, we tend naturally toward self-love, or a predominant benevolence toward ourselves.[44] When this "self-love makes itself lawgiving and the unconditional practical principle, it can be called self-conceit."[45] Now the consciousness of the unconditional bindingness of the moral law—which is given as the sole fact of pure reason—just is a consciousness of the humiliation of our self-conceit. Our natural inclination toward securing happiness is thwarted, causing us to experience the unique kind of pain called respect. In the feeling of respect, we become immediately aware of the law and of its superiority to the kinds of goods that are revealed to us by the inclinations. To be conscious of the law, then, is necessarily to be conscious of its overriding all other goods; there is, on Kant's account, no space for any question concerning the supremacy of obligation to arise. And as we have seen, one of the primary functions of the strategy of the fact of reason in Kant's moral philosophy was precisely to rule out the possibility of such genuine moral questionability.

This account treats goods as falling neatly into two categories: moral and non-moral. It is the fact of reason itself that first gives this dualism of goods: according to Kant, there is no such distinction in the experience of non-human animals, who know only the non-moral goods of inclination, or of angels, who know only the moral good presented by pure practical reason. And in giving this dualism of goods, the fact of reason immediately gives morality itself. But as Scott has shown, facts are, or at least can be, given along with a dimension of subjunctive indeterminacy: the determination of moral consciousness by the sharp division between moral and non-moral goods, with the latter given unambiguously as trumping the former, is subjoined with indeterminateness and a certain "gappiness" that sets the very eventuation of things into relief.[46] With a sensibility to this subjunctive indeterminacy, we can recognize a remainder of sense that does not fall within the moral/non-moral dichotomy: persons and things "stand out in their 'just-so' quality, their nonreducibility to anything else, in the simultaneous palpability and impalpability of their events."[47] This sensibility, Scott suggests, can be especially acute in the time of dying, when our past accomplishments and our future prospects come to appear less significant. With the letting go that can accompany the process of dying, the lives of things "stand out as they come to pass." When that happens, "their differences, their own lives, their being there as they are could well stand out as wonderful, as, just so…."[48] In the draw that we experience toward the eventuation of things in their just-so qualities, obligation recedes; we experience these things neither as objects of our pathologically-determined, self-serving inclinations nor as objects falling under the legislation of pure practical reason. Specifically moral determinations, in sum, come to appear as questionable. Not questionable in a subjective and provisional sense, such that

a bit more reflection would yield the correct answers, but questionable rather as an irreducible dimension of their coming to appear. Moral sense is questionable through and through, and the locus of this questionability is in the thing itself, not within the moral subject. The kind of moral being-in-the-world that is characterized by the ethics of obligation comes therefore to appear as contingent, and thus as optional. But a contingent ethics of obligation is not an ethics of obligation at all, at least as this is understood in the broadly Kantian sense.

What I hope to have shown, especially in this last section, is that obligation is not the alpha and the omega of ethical experience. And this is just because obligation is not even the alpha and the omega of the experience of obligation. There is a dimension of indifference to obligation in the very happening of obligation. And this dimension of indifference makes a difference. It is present within ethical experience as rendering that experience questionable. What, then, ought we to do with this questionability? What demands does it make on us? How can we know how to respond appropriately? These questions are difficult, if not impossible, to answer. The fact of obligation, with its dimension of subjunctive indeterminacy, does not orient us toward a law that would tell us immediately and unambiguously how we ought to respond. Rather, from within a sensibility that is attuned to dimensions of indifference, these sorts of questions are given as ones that we must—in a decidedly non-moral sense of this term—keep open.

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[1] Jean-François Lyotard, *The Differend*, trans. Georges Van Den Abbeele (Minneapolis: University of Minnesota Press, 1988), 108. Hereafter D.

[2] Immanuel Kant, *Critique of Practical Reason* in Immanuel Kant, *Practical Philosophy*, The Cambridge Edition of the Works of Immanuel Kant, trans. and ed., Mary J. Gregor (Cambridge: Cambridge University Press, 1996), 164 [5:31]. Hereafter CPrR. Page numbers in brackets refer to those of the Akademie Edition.

[3] Charles E. Scott, "Caputo on Obligation without Origin: Discussion of Against Ethics" *Research in Phenomenology* 25 (1995): 249-260; Charles E. Scott, "A Reply to Jack Caputo," *Research in Phenomenology* 25 (1995): 269-272.

[4] Immanuel Kant, *Groundwork of the Metaphysics of Morals* in Immanuel Kant, *Practical Philosophy*, The Cambridge Edition of the Works of Immanuel Kant, trans. and ed., Mary J. Gregor (Cambridge: Cambridge University Press, 1996), 49 [4:393]. Hereafter GMM. Page numbers in brackets refer to those of the Akademie Edition.

[5] Ibid., 93 [4:445].

[6] Ibid., 56 [4:402].

[7] Ibid., 73 [4:421]. Italics omitted.

[8] Ibid., 57; 93 [4:402; 4:445].

[9] Christine M. Korsgaard, *The Sources of Normativity* (Cambridge: Cambridge University Press, 1996), 93-94.

[10] Kant, CPrR, 177-178 [5:47].

[11] G.W.F. Hegel, *Lectures on the History of Philosophy*, trans. E.S. Haldane and Frances H. Simpson (Atlantic Highlands, NJ: The Humanities Press, 1974), 461.

[12] Rüdiger Bittner, *What Reason Demands*, trans. Theodore Talbot (Cambridge: Cambridge University Press, 1989), 89-90.

[13] Paul Guyer, "Naturalistic and Transcendental Moments in Kant's Moral Philosophy," *Inquiry* 50 (2007), 462.

[14] Kant, CPrR, 141; 164; 173; 174 [5:6, 5:31; 5:42, 5:43]; Lewis White Beck, *A Commentary on Kant's* Critique of Practical Reason (University of Chicago Press, 1960), 166 fn. 10.

[15] Lewis White Beck, *Studies in the Philosophy of Kant* (Indianapolis: Bobbs-Merrill, 1965), 211.

[16] John D. Caputo, *Against Ethics: Contributions to a Poetics of Obligation with Constant Reference to Deconstruction* (Bloomington: Indiana University Press, 1993), 22. Hereafter AE.

[17] Ibid., 25.

[18] René Descartes, *Discourse on the Method* in René Descartes, *Selected Philosophical Writings*, trans. John Cottingham, Robert Stoothoff, and Dugald Murdoch (Cambridge: Cambridge University Press, 1998), 31-32; Caputo, AE, 23.

[19] Caputo, AE, 37.

[20] Jean-François Lyotard makes a very similar point: "A phrase is obligatory if its addressee is obligated. Why he or she is obligated is something he or she can perhaps think to explain. In any case, the explanation requires further phrases, in which he or she is no longer situated as the addressee but as the addressor, and whose stakes are no longer those of obeying, but those of convincing a third party of the reasons one has for obeying. Phrases of commentary." Lyotard, D, 108.

[21] Ibid., 27.

[22] Ibid., 6-7.

[23] Charles E. Scott, *The Lives of Things* (Bloomington: Indiana University Press, 2002), 3. Hereafter LT.

[24] Ibid., 4.

[25] Ibid., 7.

[26] Ibid., 11-12; Charles E. Scott, *On the Advantages and Disadvantages of Ethics and Politics* (Bloomington: Indiana University Press, 1996), 21.

[27] Kant, CPrR, 203 [5:77-78].

[28] Caputo, AE, 27.

[29] Scott, LT, 12.

[30] Charles E. Scott, *Living with Indifference* (Bloomington: Indiana University Press, 2007), 128. Hereafter LI.

[31] Ibid., 129.

[32] Scott, LT, 15.

[33] Immanuel Kant, *The Metaphysics of Morals* in Immanuel Kant, *Practical Philosophy*, The Cambridge Edition of the Works of Immanuel Kant, trans. and ed., Mary J. Gregor (Cambridge: Cambridge University Press, 1996), 579 [6:463]. Page numbers in brackets refer to those of the Akademie Edition.

[34] Ibid., 580 [6:463].

[35] Ibid., 141-142.

[36] Emmanuel Levinas, *Totality and Infinity: An Essay on Exteriority*, trans. Alphonso Lingis (Dordrecht: Kluwer Academic Publishers, 1991), 201.

[37] Ibid., 199.

[38] Emmanuel Levinas, "Transcendence and Height" in Emmanuel Levinas, *Basic Philosophical Writings*, ed. Adriaan T. Peperzak, Simon Critchley, and Robert Bernasconi (Bloomington: Indiana University Press, 1996), 17.

[39] Scott, LT, 101.

[40] Ibid., 110.

[41] Ibid., 104.

[42] Kant, CPrR, 163 [5:30].

[43] Ibid.

[44] Ibid., 199 [5:73].

[45] Ibid., 200 [5:74]. Italics omitted.

[46] For a more developed account of the meaning of "gappiness" in Scott's thought, see Michael A. Deere, "Gappiness in Dimensional Accounts," *Epoché: A Journal for the History of Philosophy* 17 (2012): 123-142.

[47] Scott, LT, 182.

[48] Scott, LI, 43; 44.