

PAPER TITLE:

The Promise of the Impossible: Reinach and Williams on Conflicts of Obligation

ABSTRACT:

In this paper, I want to show where Adolf Reinach comes down on the question of conflicts of obligation. The aim is to look at whether Reinach's phenomenological realism of obligation holds its own against positions developed by Bernard Williams concerning the nature and import of obligations, and their capacity or incapacity to impinge upon each other and other moral and non-moral concerns. We shall see that even if Reinach turns out to succumb to pitfalls Williams identifies, he nonetheless verges upon agreement with Williams in more ways than one might expect. This result is significant because it shows that Reinach's phenomenological realism, in contrast to certain forms of moral realism, lays the foundations for what can be considered a heterontology of obligation and ethical concerns, which is presupposed by the experience of (moral) conflict in the first place.

KEYWORDS:

Reinach, Williams, obligation, social acts, promising, conflict

THE PROMISE OF THE IMPOSSIBLE: REINACH AND WILLIAMS ON CONFLICTS OF OBLIGATION

In this paper, I shall explore some of the implications of Adolf Reinach's philosophy as presented in his work, *The A Priori Foundations of Civil Law*. In particular, I want to show where Reinach comes down on the question of conflicts of obligation. Can Reinach's phenomenological realism of obligation hold its own against some of the positions developed by Bernard Williams concerning the nature and import of obligations, and their capacity or incapacity to impinge upon each other and other moral and non-moral concerns?

However much Williams and Reinach might seem like strange bedfellows - in view of their historical and methodological remoteness - I see nothing arbitrary about their relationship. Given that both thinkers make a significant attempt to consider the nature of obligation in their writings, and that Williams is one of the most phenomenologically-accessible, if not disposed, participants in contemporary debates on obligation and morality, it stands to reason that they would both have much to say to each other - even if such a possibility has up to now largely been ignored. All the same, what I shall be arguing for certainly will not exhaust the complexity of the relationship between the philosophical positions of the two, and certainly shouldn't be seen as a reason to play down what the one, especially Williams, might find objectionable in the other.

In what follows, I shall first introduce the problem of conflicts of obligations and two lines of thinking about it; second, situate the problem of conflicting obligations as it pertains to Reinach's phenomenology of social acts; third, set out the most compelling features of Williams's account of conflicts of obligation; and fourth, compare the features of Williams's account with those found in Reinach. In the end, we shall see that even if Reinach turns out to succumb to pitfalls Williams identifies, he nonetheless verges upon agreement with Williams in more ways than one might expect. This result is significant not simply because it draws attention to the subtlety of Reinach's phenomenological account of the experience of conflict of obligations. More importantly, it shows that Reinach's phenomenological realism, in contrast to forms of moral realism, lays the foundations for

what might be called a heterontology of obligation and ethical concerns, which is required in order to make sense of the experience of (moral) conflict in the first place.

1. Conflicts of obligations

There are good reasons for thinking that friendships have an important role in the formation of a person's moral awareness. This is at least partly because there can be something quite challenging about the promises we make to friends. For instance, after a friend's request to help them stick to their diet, I promise not to let them eat a rich dessert prepared for the occasion. Later, when they have second thoughts, and even go so far as to retract their earlier request, I feel a strong urge to be a good friend. It's not always easy to know what to do; should I still honor the earlier promise and help them toward their goal, or indulge them in this minor breach of their personal pledge?¹

Situations like these can be described as conflicts of obligation. They are certainly common enough in matters of friendships, but they do not only occur in that realm of human interaction. There are in fact many different possible sorts of conflicts of obligations. However, the question in each is just what, if anything, is to be done when one is torn by one or more such obligations; how, in other words, can one plot a bearing out of the conflict according to a reliable moral compass? How to resolve the conflict - that seems to be the key. For instance, in conflicts of the sort highlighted in my last example - between a bond of obligation one has voluntarily entered into, on the one hand, and a moral value or project, on the other² - it seems reasonable to suppose that the conflict should not be too difficult to resolve. We expect to be able to extract ourselves from the moral predicament, for instance through a carefully considered moral argument that will clear our conscience by dissolving the one obligation into the other.

Moral comedies can play upon this expectation, and the consequences that arise when one fails to meet it. An individual is caught between a promise and another - perhaps moral - sort of obligation, and the humor of

¹ This example is based on a scene by L. David, A. Berg, D. Mandel, and J. Schaffer, 'Palestinian Chicken,' *Curb Your Enthusiasm: The Complete Eighth Season*, R. B. Weide, dir. (HBO, 2011, DVD).

² 'To be a good friend,' however that might be defined.

the situation is connected with the character making an absurd choice, for instance, of going too far and sticking to the promise, rather than opting for what seems like a more reasonable or justified course of action. On this reading, the daftness of the comic artist lies in their not seeing what is so readily apparent to us, namely that the one obligation so clearly must give way or be sacrificed for the sake of the other. Yet these comedies may be onto something. Are things in fact so clear in our moral experience?

If it is to a certain extent natural that such conflicts should arise - given that a person may be beholden to a varied set of values and commitments - then it seems crucial to understand how obligations become entangled. It is not that we can just expect people to avoid them. More importantly still, it seems crucial to know - when such conflicts arise, and indeed they needn't always arise - what it is reasonable to expect of the person caught in the middle of them. Can we and should we blame that person for improperly sorting out the conflict - for going down the wrong route - or indeed for being unable to choose? Does the moral side of the conflict always take precedence, and is the extra-moral obligation always defeasible? And through what sort of system or process should one go about sorting out which obligation takes precedence? Again, our promises seem to get us into all sorts of difficulties; wouldn't we be better off if we had some way of weighing the import of the obligations they engender?

In contemporary discussions of ethical theory, there is an established line of thinking, linked with moral realism and David Ross's notion of *prima facie* obligations, which endorses this *pro tanto* or corrigible view of conflicts of obligation.³ A key characteristic of this view is that it posits the *corrigibility* of the respective obligations, namely, through a kind of triage or sorting of the conflict.⁴ This can be done by clearly identifying the *limits* of each type of obligation involved in the situation, that is, how each obligation is subject to modification

³ 'I suggest "prima facie duty" or "conditional duty" as a brief way of referring to the characteristic (quite distinct from that of being a duty proper) which an act has, in virtue of being of a certain kind (e.g. the keeping of a promise), of being an act which would be a duty proper if it were not at the same time of another kind which is morally significant.' W. D. Ross, *The Right and the Good*, P. Stratton-Lake, ed. (Oxford: Oxford University Press, 2002), p. 20.

⁴ 'Prima facie obligation holds under normal circumstances. It holds all other things being equal, becoming actual unless some other moral consideration intervenes. Prima facie obligations can conflict, while actual obligations cannot.' N. Asher and D. Bonevac, 'Prima Facie Obligation,' *Studia Logica*, 57 (1996), p. 19.

of its force in being related to other sorts of obligation. Based on this sorting process, one sort of obligation, for instance, one devolving from a promise, can be shown actually to trump or outweigh another sort of obligation.

The idea behind this triage for obligations is physicalistic in character.⁵ As Ross himself noted, in a system of physical forces, there is an important difference between the action of *a force* on an object and the influence of *all relevant* forces on that same object. Only the latter perspective can help one understand the direction in which an object is truly driven. According to what I am proposing to call the corrigibility thesis, the same is the case for conflicts of obligation; such conflicts are only *apparent* conflicts, and if we do a good job of sorting out the different obligations, any claim to being torn or in conflict turns out to be false. The important thing is not just to look at which *single* obligation might seem to demand a certain choice, but rather to bring the different sorts of obligation into relation, in order to see how they actually limit and influence each other. This corrigible view of conflicts of obligations, then, goes together with a strong expectation that one should always be able to reach a rational synthesis of obligations leading to a unitary course of moral action. From this perspective, we ought not be mired in irresolution or inaction when faced with conflicts of obligations, and a failure to resolve them signals a certain sort of irrationality, if not a moral pathology, within us.⁶

On the other side of the coin, a robust objection to this corrigibility thesis on conflicts of obligation has been put forward by Bernard Williams. Using what can be seen as sensitive phenomenological observation - though not in so many words - of variations in the types of obligations and their connection to the moral emotions, Williams contests the view that there is anything necessarily irrational or pathological about conflicts of obligation. More specifically, his view is that there is nothing per se wrong with us when we seem unable to

⁵ This reading is underlined by Pietroski in his discussion of Ross: 'Suggesting an analogy between prima facie obligations and physical forces, Ross says: "Qua subject to the force of gravitation towards some other body, each body tends to move in a particular direction with a particular velocity; but its actual movement depends on *all* the forces to which it is subject"' P. Pietroski, 'Prima Facie Obligations, Ceteris Paribus Laws in Moral Theory,' *Ethics*, (April 1993), 491-92.

⁶ For a representative account of this view and implications, cf. M.K. Morris, 'Moral conflict and ordinary emotional experience,' *Journal of Value Inquiry*, 26:2 (1992) 232f.

resolve them. To the contrary, by arguing for the limited significance and import of obligations within a wider framework of concerns that properly merit the title of ethical experience, Williams would show that failure is no accidental feature of our daily encounters with moral choice, and that emotions like shame and regret should be considered for a more prominent role in our moral deliberations than any accorded to them by the 'peculiar institution' of morality.

It is in light of this problem - whether conflict is integral to moral experience - that I shall explore the account of obligations furnished in the philosophy of Adolf Reinach. Can his account of obligation provide a crucial resource for this question, or have the ethical implications of his philosophy become stale with the passing of time? Given that Reinach ostensibly embraces a kind of phenomenological realism, does his account of obligations fall squarely within the corrigibility thesis linked with moral realism? On the other hand, do his reflections on obligation cohere more with those of Williams's? More ambitiously still, can we find in Reinach a contribution to Williams's question whether there is anything inherently irrational about conflicts of obligations?

II. Obligations and Reinach's Phenomenology of Social Acts

In his work, *The A Priori Foundations of Civil Law*, Reinach develops his notion of social acts in order to account for the nature of obligations, such as produced by promises.⁷ An important facet of the account of social acts there, though it has not been given much attention, is how Reinach sets up the question of how obligations can and cannot be corrigible, which is to say, how they can conflict and whether such conflict can be resolved.

In Reinach's account of social acts, we can initially identify no less three ways through which such obligations may be subject to limits, i.e. modifications. To be clear, we shall initially focus on what Reinach has to say about so-called 'extra-moral' obligations [*Verbindlichkeiten*], which he carefully distinguishes from 'moral obligations' [*Verpflichtungen*]. Nonetheless, the goal in examining the modifications of the former in turn is to gain a first bearing on whether, for Reinach, such obligations can actually impinge on each other and whether

⁷ A. Reinach, 'The A Priori Foundations of Civil Law,' J. Crosby, trans., *Aletheia*, 3 (1983), pp. 1-142 (henceforth *APFL*).

they are ultimately able to be resolved in some reliable fashion or other. These aspects are respectively the intersubjective, temporal, and conditional dimensions of obligations according to Reinach.

A first important facet of Reinach's account of the obligations created by social acts lies in their *intersubjective* dimension. Here, two concerns of Reinach's in particular deserve attention. The one is that the sorts of obligations produced by promises crucially depend on the social act of promising being essentially *other-directed*. For every promise, there must be a strict correlation between the bearer of an obligation and the bearer of a claim (or right to satisfaction), and the necessary conditions of that relation are that a promisor directly address another individual and that the other person have uptake [*vernommen*] of the promise (APFL, 19).

Apart from that requirement, however, this intersubjective dimension of promises seems to have little bearing on the actual fulfillment of the obligation, and likewise on the choices we may face between different promises. For instance, Reinach holds that the distinctive reality constituted by a social act entails that an obligation does not gain or decrease in import according to the presence or absence of the bearer of the corresponding claim. In other words, for Reinach, coming under the gaze of the other changes nothing about the nature of the obligation produced by my promise,⁸ and such obligations can even be fulfilled without either myself or the other person ever being aware of the execution of the 'content of the promise.'⁹ In a word, each

⁸ 'We are now in a position to clear up the difficulties which one found in the 'bond' resulting from promises. It is of course incomprehensible that the informative expression of a resolution of will should produce an obligation. But we have found in promising an act *all its own*, and we claim it lies in the essence of this act to bring forth claims and obligations.' (APFL, 26); cf. also APFL, 30: 'Social relations of right (...) are constituted through social acts. The joy or sadness of an individual, his satisfaction or regret, his inner assent or negation, have no influence on these relations.'

⁹ 'The normal thing is for claim and obligation and thereby the whole obligatory relationship to dissolve by the carrying out of the content of the promise - which does not have to be phenomenally characterized as a fulfilling action [*Erfüllungshandlung*]:' (APFL, 32); cf. (APFL, 12), as well as K. Mulligan, 'Promising and other Social Acts,' *Speech Act and Sachverhalt*, K. Mulligan ed. (Dordrecht: Martinus Nijhoff, 1987), p. 70: 'Realisations of social acts (...) are non-phenomenal fulfillments (...) I can do what I have promised you without either you or I being aware that it is my promise that is being fulfilled.'

obligation according to Reinach has a distinct, irreducible life of its own, irrespective of its social constitution by oneself and the other.

Furthermore, obligations stemming from promises may be understood to be intersubjective in the sense that they may be subject either to a revoking on the part of the promisor or a waiving on the part of the promisee. In the former, revoking is an act primarily directed at the promise or obligation itself, but it can only be 'efficacious' provided one has been granted the power to rescind the promise by the promisee (*APFL*, 33). Likewise, in the case of waiving, the power to annul the obligation lies in the bearer of the claim - again, the promisee - and therein lies the rub for someone caught between two or more promises. While those obligations may be subject to intersubjective determination, the power the other person has over my obligations in no way diminishes the force or bond of that obligation. In Reinach's own words, 'obligation excludes by its essence and meaning that an act of waiving could be directed to it' (*APFL*, 32). We cannot stack our various obligations against each other, like we might cover our bets at a roulette table, and simply be concerned with those obligations most unlikely to be waived, or the ones hardest to be granted revocation.¹⁰

Second, it might seem curious to say that obligations can possess a certain form of temporality, but according to Reinach they do.¹¹ In his view, obligations stemming from promises have a clear moment of inception and dissolution (*APFL*, 14). They come about at the moment when the promise spontaneously, intentionally uttered by a speaker is heard and understood by the addressee, and they can end in a number of ways, in being either fulfilled, waived, or revoked. Reinach even seems to speak of a certain tendency in the obligation towards its own realization, distinct from its reality constituted through the social act. While the

¹⁰ A further intersubjective trait of obligations deserves mention, namely their transferability from person to person. Here, however, we run up against a similar implication to the one arrived at with respect to the conditionality, namely that while such modifications can transplant the state of obligation from one bearer to another, they do not diminish the 'bond' or import of the transferred obligation for its bearer at that moment.

¹¹ Cf. Mulligan, 'Promising and other Social Acts,' p. 68f.: 'Social acts are temporal entities.'

obligation may never necessarily reach its realization, its very existence entails a demand that it reach its appropriate destination [*Bestimmung*] in a form of fulfillment.¹²

On the other hand, Reinach points to other, atemporal aspects of obligations that complicate their picture in important ways. For one thing, obligations are not temporally exclusive; I can fall under a number of obligations at any one moment, and the order in which these obligations are incurred has no bearing on their respective demands to be fulfilled. This means that in terms of the formal demand of the promise, an obligation I made yesterday is no more and no less pressing than one I made fifteen years ago. Moreover, while obligations might have a clear beginning and end, they do not seem to have any kind of duration per se, and do not age in any recognizable fashion.¹³ The sort of demand posed by an obligation neither increases nor decreases the closer one comes to its realization, and even in cases when they would be made conditional on the passing of time, they remain just as robust as in their moment of inception. As much as we might like to, we cannot simply wait for obligations we've promised to fulfill simply to dissolve, not even when their addressee might have forgotten about them or passed away (*APFL*, 32). When faced with a conflict of obligations, then, there can be no appeal to the temporal character of the one or other obligation in Reinach's view; each obligation exists with its own distinct, incommensurable form of temporality.

¹² 'We already saw earlier that the obligatory relationship does not rest in itself, as does for instance the relation of owning. Like the act of promising itself, it tends towards the realization of its content by the promisor: It is destined to be dissolved. To every claim and to every obligation there "belongs" the realization of their content, not in the sense that the realizing action necessarily exists as soon as they exist, as claim and obligation exist as soon as the heard act of promising exists, but rather, in something like the sense in which admiration "belongs" to a beautiful work of art, or indignation to a bad action. If the realizing action does not occur at the time at which it should, the obligatory relationship undergoes a change: the claim is "violated." It is further conceivable that the fulfillment of the claim becomes impossible, whether because the promisor is unable to carry out the promised action, or because —as with obligations which ultimately aim at realizing some end result — something has come up which makes it impossible to achieve the result through any action. One cannot say that claim and obligation thereby dissolve.' (*APFL*, 32)

¹³ 'But cannot a claim or an obligation last for years without any change? Are there any such experiences? And further: are not claims and obligations really there even when the subject does not have or need not have any experiences, as in sleep or in the loss of consciousness?' (*APFL*, 10)

Third, Reinach notes that all obligations created through promises can be either 'unconditioned' or subject to 'conditional' modification (*APFL*, 27). Here, 'unconditioned' pertains to the absence of any relation of the obligation to change (or lack thereof) in the world in which it would be fulfilled. In the latter case, a 'conditional' modification to an obligation can occur in one of two ways. My social act of promising can itself be conditional, which is to say, I incur an obligation from the moment a possible event takes place; if it stops raining, I promise to take out the garbage. On the other hand, the content of my promise can be conditional, as in 'I promise to take the boy to football practice if it doesn't rain.'

The difference between the two sorts of conditionality is subtle, and according to Reinach largely comes down to a difference in the precise moment at which the promisor falls under a certain obligation (either now or at some hypothetical moment in the future).¹⁴ Beyond these stipulations, however, there is very little that distinguishes conditional obligations from unconditional ones. Even though conditionality seems to be a limit imposed upon the generation or coming into existence of one or other obligation, it in no way attenuates the reality of such obligations once they do exist. In other words, Reinach would deny that a conditional promising could ever result in a lesser form of obligation than an unconditional one. In terms of conflicts of obligations, this means one cannot justify choosing one obligation above another on the premise that the one was conditional in provenance, that is, somehow weaker in its pull upon oneself.

Taken together, what do these different dimensions of obligation in Reinach's account demonstrate in terms of his understanding of obligations and their potential to conflict with each other? More to the point, is there anything about them which would indicate whether and how their conflicts are to be resolved and how blame is to be assigned when they are not? At first sight, the evidence would suggest that Reinach takes a negative view on this. Despite the fact that obligations may, loosely speaking, be seen to be limited in certain ways,¹⁵ there seems to be very little in terms of their nature that could prevent a person from being caught or torn between two or more obligations. What's more, there is nothing about the logic of either the temporality,

¹⁴ For this reason, Reinach's distinction between the conditional social act and the unconditional social act with a conditioned content is easiest to understand in terms of his account how (and when) obligations can be waived.

¹⁵ Namely, only the bearer of an obligation can fulfill a promise, only the promisee can waive one, etc.

intersubjectivity, or potential conditionality of promises that allows one to derive rules for how they limit each other and thus for how their conflict should be resolved.

To put this differently, there is a clear upshot here, in Reinach's account of these three dimensions of claims and obligations, for the corrigibility thesis on conflicts of obligation. Namely, according to the corrigibility thesis, the only thing that matters in weighing obligations against each other - and for resolving their apparent conflict - is the content of the obligation itself, i.e. 'to do x' or 'to do x so that y.' This content is what makes the obligation into something 'morally real,' and thus something that drives our choices in certain directions or another. For Reinach, something else entirely comes into play, namely the form under which the obligation is constituted; this is its social reality, its genesis via a social act involving oneself and another. Whereas the corrigibility thesis bypasses consideration of the formal conditions for the constitution of claim and obligation,¹⁶ Reinach allows us to see that obligations can conflict in no less than two ways - in terms of their contents, but also in terms of their formal status as socially constituted realities.

Be that as it may, this last point shows there is a problem with this picture of Reinach. Up to now we have been considering only what Reinach has to say about the potential for two obligations stemming from social acts to conflict. However, promises are clearly not the only source of our obligations, so the question remains whether Reinach has something to say about cases of conflict between promises and other sorts of obligations.

In other words, we have seen that for Reinach there is nothing in the inherent nature of obligations incurred through promises - that is, if we abstract from their content - that can allow us to decide which promises to keep, and which ones to break. In this respect, they seem unlike other action-directed states such as calls to action or risks to be overcome. Yet while such obligations appear not to limit each other, i.e. are not corrigible in the ways outlined above, this seems so only in a superficial sense. After all, even if, in the preceding, we have followed Reinach in abstracting from the content of obligations, the better to grasp their phenomenological character, we cannot ignore that obligations must always have a content, and one moreover that is connected with a value - even when we ostensibly promise 'to do nothing.' This means that when faced

¹⁶That is, only the question 'to do x' is morally real.

with multiple obligations, all one needs to do is compare the respective values connected to the content of each obligation. The implication of corrigibility would seem unavoidable, and reflection on the nature of promises a red herring,¹⁷ distracting us from a more pressing, if harder to manage, discussion of values and their relationships.

This brings us back to our earlier question - is this where Reinach ultimately comes down on the so-called corrigibility thesis? And have we thereby exhausted the resources by which Reinach can account for obligations and their conflicts? In the ensuing, we'll see that the answer is no. Apart from the previously mentioned dimensions of obligation investigated by Reinach, he also considers what moral and extra-moral obligations are, and how they relate, and thus is clearly interested in whether the conflict of promises with other sorts of obligations can be resolved or not. Anticipating a bit, we will see how he claims that obligations are indeed *corrigible* in their moral character, in contrast to their other facets. On the other hand, there is no little subtlety to Reinach's answer, as well as some promise for a phenomenology of ethics. To demonstrate this, however, we first need a closer look at the corrigibility thesis, and how it can be called into question.

III. Williams on the Experience of Moral Conflict

In a delicate if dense analysis at the end of *Ethics and the Limits of Philosophy*,¹⁸ Bernard Williams offers a many-pronged critique of the 'peculiar institution of morality,' arguing that notions of obligation and duty have come to dominate contemporary moral thought, stunting it in crucial ways. While there is not enough time to get into that discussion here, what is of relevance to us is how Williams builds his arguments on the basis of a careful investigation of phenomena of conflict of obligation, and on an apparent inability for the corrigibility thesis to account for them.

The corrigibility thesis is, once more, the name we've proposed for the idea that conflicts between obligations - above all, between moral obligations, and between moral and extra-moral obligations - not only

¹⁷With respect to the problem of the conflict of obligations.

¹⁸ B. Williams, *Ethics and the Limits of Philosophy* (London: Fontana Press, 1985) (henceforth *ELP*).

ought to but can be reliably resolved. For instance, it holds that this resolution can be achieved by understanding the moral force of promises to be merely *conditional* within a framework of over-arching and overriding moral obligations.¹⁹ This thesis can thus be linked to what Williams identifies as the 'morality system' - a vehicle by which persons can be held accountable or blamed for their actions according to an ideal of 'purity,' that is, persons should never be mixed up, hesitant, or in doubt about what they have chosen and why they have done so. As such - as a system bent on reliably enforcing blame, even with respect to persons 'who would prefer not to be in this system or bound by its rules' (*ELP*, 177) - Williams identifies three important reasons for why it critically falls short of understanding the conflict of obligations. While Williams's arguments are already well known, our focus shall be on how each is grounded in a profound grasp of the moral experience of failure.

First, Williams questions whether obligations always take precedence in our lives, and whether they should. More precisely, however we might understand moral obligations, Williams points out that we cannot simply take them as the only sorts of concern that might have importance or overriding significance, that is, which might leave us in a dilemma. As he puts forward, there are forms of concern - such as gratitude or honor - that are radically different from any form of obligation, and which as often as not may turn out to be the deciding factor in our moral deliberation. Moreover, Williams even points to non-moral concerns - again, entirely distinct from any form of obligation - that may conflict with or override obligations, such as in his example of a fictional person who chooses to follow a calling to create something beautiful instead of obeying an obligation to stay and take care of their family.²⁰ There may well be reason to speak of a moral failure in such cases - certainly, we would not like to disappoint anyone during our lives - but not necessarily one for which a person ought be blamed.

¹⁹ In this respect, the notion of *prima facie* obligations has given way to seeing promises and the like as mere *pro tanto* obligations. Cf. for example, D. McNaughton and P. Rawling, 'Deontology,' *The Oxford Handbook of Ethical Theory*, D. Copp, ed. (Oxford: Oxford University Press, 2006), p. 433: 'The duty to keep promises is not derivative (...) but it is conditional.'

²⁰ B. Williams, *Moral Luck* (Cambridge: Cambridge University Press, 1981), p. 23: 'While we are sometimes guided by the notion that it would be the best of worlds in which morality were universally respected and all men were of a disposition to affirm it, we have, in fact, deep and persistent reasons to be grateful that that is not the world we have.'

Now, this is a weak sort of objection Williams can offer to the corrigibility thesis. In terms of the latter - to block it - it is not enough to suggest that there are things other than obligations weighing upon our deliberations. The corrigibility thesis does not have to be limited to obligations; it can just as easily posit the resolvability of all moral (and non-moral) concerns, and not just obligations. However, Williams's line of reasoning does pose a serious question to the corrigibility thesis. It shows just how ambitious and all-encompassing such corrigibility would have to be in order to ground moral realism, and in order to ground the judgement that any and all failures to resolve moral concerns are signs of a defect in our moral character.

Second, in a less indirect argument, Williams enables us to see that the corrigibility thesis may come under question because of its reliance on an '*obligation-out obligation-in principle*' (ELP, 181). That is, the corrigibility thesis cannot posit the resolvability (i.e. the conditionality or *pro tanto* character) of conflicting obligations without assuming some moral obligations have greater 'stringency' or efficaciousness than others. So, for example, if I am wondering whether to keep my promise to defend a friend at a hearing or to stop and help this person at the station, the idea is that I would appeal to a self-evidently wider and more binding principle than any prescription to help friends. For instance, in the form 'one must always help those ailing and less fortunate than oneself.' According to the corrigibility thesis, the wider, more stringent obligation would then win out over the lesser one, and any conflict of obligation would be averted.

According to Williams, however, this '*obligation-out-obligation-in*' principle does not accurately portray the force or binding character of obligations. More to the point, it simply does not jell with the import of obligations in the trajectories of our moral lives. The problem is this; if we go along with the corrigibility thesis and accept that there are such wider, ever more stringent obligations that override lesser, more particular ones, then why do we not see evidence of them throughout all the moments of our lives, and not just at times when we're considering whether to keep a promise or not? In other words, if something like the corrigibility thesis is correct, then we appear to be committed to an untenable view, namely that of being morally liable for those stringent obligations during every moment of our lives - even ones at which there is apparently no conflict of obligation at all. I then just about never have an excuse not to help the person at the station, not even when the garbage needs to be taken out, when I've got too many emails to answer, and so on.

Third, the corrigibility thesis seems to disregard and is even opposed to the *phenomenology* of the conflict of (moral) obligation. The latter designates, more precisely, the sorts of emotional responses that we may have to such conflict. In one of Williams's examples, if I promise to visit a friend, and then get presented with an opportunity to 'advance an important cause' (EPL, 180) on the way to my friend, it would then seem like I have 'good and compelling reasons' for breaking the promise (EPL, 176) - I simply need to explain to my friend whatever it was that got in the way of our engagement. However, if that is the case, why should it be that I feel bad - as we often do - after having broken the promise? This is where the phenomenology of feelings like shame, regret, and failure pushes back at the corrigibility thesis. Should we just consider such emotional responses to be purely irrational, like how some psychotherapists claim that victim shame is an irrational and negligible response to violent crime?

As Williams is also careful to point out, we feel bad not simply because our friend ended up being alone [i.e. because of the result of the broken promise], but because of what we felt we could have done [i.e. 'agent-regret'²¹]. In a different set of terms, we do not simply feel disappointment at having broken the promise (a goal was not reached), but dissatisfaction with ourselves and our own limits. Consequently, the fact that we would not just feel bad, but would also want to make amends after breaking the promise seems to seriously undermine the corrigibility thesis, which in this example would deny any blame whatsoever. We feel bad because of a failure, and going by Williams's view we have to see that failure as a fundamental category of moral experience. In a nutshell, as Williams also insists, 'ought' does not entail 'can' (EPL, 175).

In looking now to Reinach and his account of morality in the *A Priori Foundations of Civil Law*, I should first concede that there certainly appears to be much that runs afoul of Williams's concerns; to mention only the most glaring of these, Reinach seems willing to consider only moral duties and corresponding entitlements as concerns worthy of moral consideration. However, scratching below the surface, one can find deeper questions about the relationship between Reinach's and Williams's views on conflicts of obligation.

IV. Reinach vis-à-vis the Corrigibility Thesis

²¹ Williams, *Moral Luck*, p. 27f.

There are namely three aspects of Reinach's account of *moral* versus *extra-moral* obligations that raise interesting questions about his understanding of conflicts of obligation.

First of all, one can point to Reinach's concern to distinguish between the ways in which obligations come into contact with the moral sphere. Reinach differentiates first of all between so-called moral *Verpflichtungen* ['duties'] and extra-moral *Verbindlichkeiten* [obligations], and insists that the former 'has according to its structure nothing at all do with the extra-moral obligation that results from the promise (...) both of these are completely different even as to their origin' (APFL, 44). Without making too much of it, what is of interest is what Reinach does not say in this context; namely, he does not say that moral duties automatically void or negate the existence of these so-called extra-moral obligations.

This is in a context where he clearly could have done so, for instance in reference to his example of the promise to assassinate someone (APFL, 45). Instead, he insists on their essential distinction, claiming any extra-moral obligation coming from a promise 'remains untouched' by the moral duty. This means that even when the moral obligation might take precedence, we can still be held accountable for the extra-moral obligation. This is certainly only a partial answer to our question, but already establishes that Reinach clearly had the resources, if not the mindset, to account for some of the problems identified in Williams's arguments against the corrigibility thesis.

Second, Reinach is careful to distinguish between different ways in which promises themselves can be described as morally obligating. On the one hand, promises can be morally obligating insofar as, quite simply, 'when a promise has been given, there is a moral duty to fulfill it' (APFL, 45). In other words, promises constitute purely formal moral duties from the moment a social act establishes a relation of claim and obligation, and this understanding of promises is precisely what Ross later had in mind when referring to the intuitiveness and basic moral reality of *prima facie* obligations.²² On the other hand, promises can be morally

²² 'The moral order expressed in these propositions is just as much part of the fundamental nature of the universe (and, we may add, of any possible universe in which there were moral agents at all) as is the spatial or numerical structure expressed in the axioms of geometry or arithmetic.' W. D. Ross, 'What Makes Right Actions Right?' in Wilfred Sellars and John Hospers, eds., *Readings in Ethical Theory* (New York: Appleton Century Crofts, 1952), 184.

obligating with respect to their content; a promise to help a person ailing at the station serves a clear value, and so through its content an extra layer of moral duty is added to the 'normal' or extra-moral obligating force of the promise.

What is useful in Reinach's account of this is how he insists that we not confuse the two; Reinach states that the purely formal moral duty of fulfilling the promise is grounded solely in the social act of promising itself, and the generation of this moral duty is in no way affected by the content of the promise, be it moral, immoral or otherwise (*APFL*, 45). In terms of the shortcomings of the corrigibility thesis and understanding conflicts of obligations, this stance shows great potential. Reinach would seem to be anticipating Williams's critique that moral obligations not be seen as automatically overriding and voiding each other, as if they could be all fit into a system bent on ascribing blame universally.

Third, it is important to note that Reinach does not end his analysis with this previous point. Just after insisting that the purely formal moral duty to fulfill promises, grounded in the social act itself, and the moral duty deriving from the content of promises are 'juxtaposed and at odds with each other (...) each deriving from very different factors,' he goes on to write the following:

But the essential thing for us in the present and in other ethical contexts is that here too an obligation arises from the promise and remains intact, and that even a moral duty arises, even if it is outweighed [*überwogen*] by other higher duties. We can know whether an obligation should be fulfilled only by going beyond it to the moral duty grounded in it. For only in this sphere is a comparison with other duties possible. The extra-moral obligation remains untouched by all this. (*APFL*, 45)

Reinach appears to be saying that even though social acts of promising immediately generate both obligations [*Verbindlichkeiten*] and duties [*Verpflichtungen*], in situations of conflict of moral obligation, it is natural for the one moral obligation (for instance, not to kill) to 'outweigh' the other. The problem is to understand what Reinach means here in claiming that the obligation 'remains intact' even if it is outweighed. We can take more and less charitable views on this in terms of the corrigibility thesis. On the one hand, Williams also seems to concede that sometimes one way out of the conflict seems inevitable; this is the simpler, non-tragic form of

conflict he identifies in writing that '[the obligation] that is outweighed also possesses some stringency.'²³ The conflict in this case means that while one knows what one must do, and cannot avoid it, one still feels dissatisfied with oneself because another duty had been left unfulfilled.

On the other hand, while Reinach may leave the door open for one kind of conflict, he seems to shut the door on the possibility of another. This is the more serious or tragic kind of conflict that Williams identifies, when we cannot choose, where 'an agent can justifiably think that whatever he does will be wrong.'²⁴ Considering Reinach's own example, we have to concede his substantive point - we should not obey promises to assassinate. However, the wider implication of Reinach's stance cannot be lost upon us; Reinach endorses the view that moral obligations should ultimately be resolvable. That is, unlike the other dimensions of obligation, the moral 'dimension' is indeed one in which obligations turn out to be 'comparable,' i.e. *conditional*, one upon the other. The corrigibility thesis thus appears to have surfaced in Reinach's position on obligation after all.

This is in a sense a disappointing result. It is not just that we may have hoped for better from Reinach, but because in an earlier passage he presents a much more stimulating view of what happens when we fall into such intractable conflicts of obligation, when one precisely cannot act to fulfill the obligation. There, he asserts with respect to extra-moral obligations that even when they become impossible to fulfill, 'one cannot say that claim and obligation thereby dissolve' (*APFL*, 32). In other words, the 'obligatory relationship (...) becomes incurably sick' (*APFL*, 32) but does not disappear. This description thereby sets Reinach up to account for an emotional response to the conflict of obligation in a fashion very similar to Williams's arguments against 'ought implies can' and the 'obligation-out-obligation-in' principle.

The question we've arrived at is why Reinach did not extend this insight to the moral sphere of obligation. Based on what I've tried to show, it seems that we are well within our rights to wonder whether he could have

²³ Williams, *Moral Luck*, 74: '[T]here are certainly two obligations in a real case of this kind, though one may outweigh the other, but the one that is outweighed also possesses some stringency, and this is expressed in what, by way of compensation, I may have to do for the parties who are disadvantaged by its being outweighed.'

²⁴ *ibid.*

done so, and whether he should have. Even when Reinach clearly states that moral duties - *Verpflichtungen* - take precedence over *Verbindlichkeiten* - can't we still extrapolate from his account of the latter and predict that in the specifically moral sphere of the *Verpflichtungen* Reinach would argue for the irreducibility and non-corribility of moral duties, which would be much in line with at least part of Williams's concerns?

Framed in more positive terms, in Reinach we can find a strong indication of an important phenomenological insight regarding conflicts of obligations in particular, and the experience of conflict in general. As Williams would later highlight, it appears that all conflicts of obligation are grounded in a form of radical difference that goes beyond a simple ontological dualism of the one who is bound, as a subject, and that which binds, such as an obligation. Rather, such experience of conflict involves what I would suggest to be understood as a heterontology of the social realities of obligations themselves. This is a notion of radical difference within and between social realities that is unavailable to moral realism and the corrigibility thesis, as a sort of rift or rupture between what binds and what binds, or again between what binds us and what goes beyond (or underlies) binding. The link between this difference and the experience of conflict that Reinach sets the stage for is thus no trivial insight; we are not simply confronting the fact that conflict does not involve sameness. Rather, its import lies in what the experience of conflict of obligations confronts us with - not just that failure is an unavoidable category of moral experience, but beyond that, that there is something fundamentally, vexingly incommensurable about the forces pushing and pulling us in our moral lives, to which we nevertheless remain completely answerable.

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