

The Relation between Moral and Legal Obligation: An Alternative

Kantian Reading

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Synopsis

The view I wish to scrutinize is the idea – attributed by many to Kant – that legal and moral obligation are distinct types of obligation. To support this claim its proponents adduce, on the one hand, the fact each type of obligation requires from the agent a different kind of motivation: while morality requires that the content of the obligation be simultaneously the content of the incentive of the agent, legal obligation is premised on totally different grounds: here the incentive of the agent is irrelevant for the existence of the obligation; for legal obligation concerns the external behaviour of agents, not their motivational reasons. In addition to the above claim, it is argued that the content of legal obligation analytically entails an authorization to coerce someone who infringes upon it (Doctrine of Right, 6:231).

This reconstruction has led to the claim that Kant is a positivist when it comes to legal obligation: in other words, that he endorses some form of the separation thesis, or the claim that there exists no necessary connection between legal and moral obligation. What is more, under a more stringent version of the claim, legal obligations are grounded on coercive social institutions, whereas moral obligations on a pure test of reason.

This reading rests on two argumentative paths which work *in tandem*: the first claims that the grounds of legal and moral obligation are distinct because of the difference pertaining, in each case, to the motivation of the agent. The second path adds that all legal obligation contains something of

which there is none in moral obligation: coercion through social institutions; hence coercion must account for a specific difference in the case of legal obligation.

It follows that in order to undermine this reading one must level a twofold attack: to take on the thesis that motivation matters at all to the grounding of (legal and moral) obligation; second, to argue that coercion does not concern the grounds of legal obligation, but merely something akin to an enabler of legal obligation. (This claim could further be linked to the thematic of the ‘circumstances’ of the duties of justice).

In my paper I mainly attempt to deliver the first prong of the attack, while offering some implicit suggestions for mounting the second. There I argue for a distinction between grounds and motives which can be easily accommodated by Kantian metaethics. This distinction works some considerable way toward delivering the conclusion that motivational reasons *qua* psychological states are irrelevant to the grounds of either of moral and legal obligation. Conversely it is reasons *qua* normative facts which in both cases can ground an obligation.

With this conclusion in place, the issue of coercion can be given a new twist: while in morality one must start from subjective psychological states and work one’s way, through a test of reason, to non-subjective normative facts, in the case of law the process is the reverse: here the Kantian philosopher is not interested in the question ‘how to elevate subjective motivational states to objective reasons?’ but, instead in the question ‘how to put objective reasons – those arrived at by way of sound moral reasoning – into the business of guiding the behaviour of actual agents?’ Coming as an answer to the latter question coercion (or enforcement) assumes simply the role of an enabler of an antecedent obligation. In this

sense, coercion in law is the flip-side of the test of reason in morality: As in the case of morality the subjective motives of agents cannot be relied upon to **ground** sound obligations, so, in the case of law, the subjective motives of agents cannot be relied upon to **pursue** sound obligations. Whereas in morality a test of ‘pure reason’ undertook the role of ‘purifying’ subjective motives, coercion in law undertakes the role of aligning subjective motives together with a view to acting on sound reasons (obligations). In either case what grounds obligations are normative truths (facts). However, these facts need to be linked to agents’ capacity for action: internally in morality (by considering the raw psychological set of agents); externally in law, by eliciting a uniform response of actual agents to right reasons through coercion (enforcement).

Understandably my analysis will have left a lot of questions unanswered, especially with regard to the role and function of coercion with respect to legal obligation. However, its scope and claim should be given a more modest tone: In the first place what it tries to do is displace the received view that the different focus of law and morality (external behaviour in the first case, internal incentive in the second) entails a difference in kind between obligations of law and obligations of morality. If this step has been completed successfully then the standard view on the role of coercion/enforcement will come under considerable pressure.