# Rights, Duties, and Moral Conflicts

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**ABSTRACT**

In this paper I would like to make a contribution to the debate on rights-talk and duties-talk relationship and priority by addressing the problem from a peculiar angle: that of *moral conflicts* and *dilemma*. My working hypothesis is that it should be possible to identify some basic and relevant normative features of rights-talk and duties-talk by observing how they modify the description of moral conflicts. I will try to show that both rights and duties posses *original* and *irreducible* normative features, and that these latter can be employed in a general assessment of their pro and con. I will first show the conceptual relationship between rights and duties, analyzing in the process a deflationary argument for rights. Second, I will define the general features of moral conflict and dilemma. I will then analyze the different readings that can be given, taking rights or duties as standpoints, of two kinds of moral conflicts: «asymmetric» and «symmetric» conflicts.

## 1. *Introduction*

When Herbert George Wells asked Mahatma Gandhi for an opinion on his *The Rights of Man: or What Are We Fighting For?*, Gandhi replied with these words:

> You will permit me to say that you are in the wrong track. (...) Begin with a charter of Duties of Man (both M and D capitals) and I promise the rights will follow as spring follows winter.[1]

Gandhi's response implicitly states three points: a) *duties comes prior to rights*; b) duties and rights are somehow *related*; c) the issue of whether or not rights or duties stand as fundamental is not *trivial*. Besides Gandhi, many other authors have answered the latter point with the thesis expressed in «a». On the other hand, others have instead argued for the priority of «rights-talk» over «duties-talk», defending the necessity – as was believed by Wells – of shaping issues of justice by

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[1] As quoted in Jha (2004).

starting from rights. Supporters of both theses have employed several arguments to strengthen their claim. They have tried to demonstrate, for instance, that one of the two concepts comes logically and/or conceptually prior to the other; or that there is, instead, an ontological and/or epistemological precedence; or, lastly, that the opposite concept lacks originality and/or normative appeal.

In this paper I would like to make a contribution to the debate by addressing the problem from a peculiar angle: that of *moral conflicts* and *dilemma*. My working hypothesis will be that it should be possible to identify certain basic and relevant normative features of rights-talk and duties-talk by observing how they modify the description of moral conflicts. I will try to show that both rights and duties posses *original* and *irreducible* normative features, and that these can be employed in a general assessment of their pros and cons.

I will not carry out this assessment. Nevertheless, as I believe that there is no logical or ontological precedence of one of the two concepts over the other (the only true grounds for supporting the priority of rights or duties being thus originality and normative appeal), I will defend the thesis that *rights possess distinctive and peculiar normative features*, and that *they cannot be reduced to «shadows cast by duties»*. My discussion will be limited to *moral rights*, that is, to rights that pertain to the *moral* domain of normativity[2].

I will proceed in the following order. First, I will show the conceptual relationship between rights and duties, analyzing in the process a deflationary argument for rights based on their logical correlativity with duties and other primary warranties (par. 2). Second, I will define the general features of moral conflicts and dilemmas (par. 3). I will then analyze the different readings that can be given, taking rights or duties as standpoints, of two kinds of moral conflicts: «asymmetric» conflicts (par. 4), and «symmetric» conflicts (par. 5). In the last paragraph, I will recap the main conclusions (par. 6).


## 2. *Rights and duties*

Rights and duties can be related in many ways. As it is often said, the possession of rights comes with responsibilities and duties; similarly, duties in order to be effective have to be paired with corresponding liberties (if we accept the «ought implies can» principle); moreover, breaking a right usually triggers a duty of compensation of some kind. However, none of these relationships tell us anything fundamental about the *logical* relationship between rights and duties. This latter has to be expressed as a *relationship of correlativity*. According to a tradition that

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[2] For a general analysis of moral rights, see De Mori (2000).

goes back to at least Pufendorf[3], to every *stricto sensu* right[4] corresponds a duty of some kind. This is to say, that, for instance, to my right to be accompanied by you to the cinema corresponds your duty to accompany me to the cinema.

## 2.1 Rights and duties correlativity

Correlativity can be interpreted in two ways. On the one hand, it could define a *biunivocal* relation: every right implies a duty, and *vice versa*. On the other hand, it could define a *univocal* relation: while every right implies a duty, not all duties imply rights. Yet, things stand a bit more complicated, for at least two reasons.

The first reason is that, as shown by the classical analysis made by Hohfeld[5], rights do not entertain a univocal relationship with duties. Hohfeld demonstrated that, in ordinary language, the notion of rights carries four meanings, each one correlating with a different normative elements[6]. And, although Hohfeld's reconstructive proposal was to restrict the use of the term «rights» to what he called «claim-rights» – that is, rights which exclusively correlate with duties – his solution was not met with much enthusiasm, and the majority of neo-Hohfeldian analyses have come to accept plurality of meanings as something constitutive of rights-talk[7]. If things stand this way, it would be perhaps more fruitful to speak of

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[3] See for instance Tuck (1979: 159-61). Fagiani (1990) and Haakonssen (1996 :41) may also be helpful to this issue, as they scrutinizes further the origin of this thesis.

[4] I will use in the rest of the paper the expression «*strictu senso* rights» to distinguish rights correlating with duties and other secondary warranties from other two kind of rights originally analyzed by Joel Feinberg: «manifesto-rights», and «appropriateness-rights». These two latter kinds correspond to a looser way of using the term «rights» than the one implied by what I call «*strictu senso* rights». Manifesto-rights are claims of need that can be considered as potential arguments for establishing new *strictu senso* rights, along with what has been called a «dynamic» conception of rights – see Feinberg (1973; 1980); on the dynamic conception of rights see Sumner (1987) and Celano (2001). Appropriateness-rights are instead rights used to serve as "warrants of appropriateness" (Feinberg (1992: 228-30); Feinberg cites two examples of appropriateness-rights: the ones contained in the expressions «You've got a right to feel tired» and «I gotta right to sing the blues»; the analysis of these two rights, in Feinberg opinion, shows that they are irreducible to ordinary moral and legal rights.

[5] Hohfeld (1919). I will not recap here Hohfeld's argument. A good restatement can be found in Kramer (1998).

[6] Duties correlate with Hohfeld's «claim-rights». Other kinds or Hohfeldian rights are «liberties» (correlating with «no-claims»), «powers» (correlating with «liabilities»), and «immunities» (correlating with «disabilities»).

[7] The only supporters of Hohfeld's proposal are some «interest theorists», like Kramer (1998; 2010). Yet, not all interest theorists agree on this point: see, for instance, Lyons (1970). Moreover, all «choice-theorists» reject the identification between rights and claim-rights: this is plain from their definition of rights as clusters of claims, powers, and liberties – see for example

a *correlativity between rights and primary warranties*, where the phrase «primary warranty» has to be understood as a catch term for all the four correlated elements[8].

The second reason is that duty is a broad concept, as it encompasses many kinds of normative structures which are, in many cases, only loosely connected with rights. Roughly speaking, duties can be subdivided into two large categories: *general* duties, and *directional* duties. In the first category fall all duties that do not have a determinate *referent* (that is, the person *to whom* the duty is owed) and a determinate *beneficiary* (that is, the person who is subjected by the dutiful action). General duties are focused on some kind of action, which is generally prescribed to the agent without further specifications: they are duties *regarding something*, and not *duties to someone*. An example is the duty of charity: no one is entitled to be the referent or the beneficiary of a duty of this kind. For this reason, general duties do not correlate with rights.

Directional duties, on the other hand, *can* correlate with rights, but they do not need to. In fact, there are many examples of directional duties that do not correlate with rights, like duties involved in gift and desert practices, or duties between members of «thick» ethical relationships such as friendship. Gift practices and societies have strict rules determining how gifts ought to circulate, and these rules entail many directional duties: but no one can be said to possess a rights to receive a gift or to constrain the receiving of gifts. This is similar to what happens in desert practices like tipping. A good waiter *deserves* a generous tip, as the institution of tipping calls for the duty of leaving a generous tip to a good waiter. However, this does not entail that the waiter has a right to be tipped. In institutions like friendship something analogous happens. Duties to friends can be broken, but this, while crucially painful, does not amount to breaking any «rights of friendship».

The fact that directional duties do not always correlate with rights can be taken as an indirect and *prima facie* proof that it is possible to employ duties-talk without implying the correlative rights-talk: that is, that the two languages describe a related but distinct normative domain, each with its peculiarities and original functions. Even if all *strictu senso* rights entail primary warranties, and more specifically, even if all Hohfeldian claim-rights entail duties, only *some* directional duties *can* entail rights. This fact fits perfectly with the thesis frequently advanced by historians that the concept of rights has been «invented»

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Wellman (1995). Against the identification stands also many authors not aligned with the interest-choice dichotomy, like Rainbolt (2006), Wenar (2005; 2008), and Cruft (2004; 2006).

[8] I borrow the term «primary warranties», as I will also do later for another term, «secondary warranties», from Ferrajoli (2001). It has to be noted that duties, in any cases, remain the irreplaceable paradigm for understanding the notion of primary warranties.

by a particular (that is, western) culture only in recent (late medieval or early modern) times, while the concept of duty is of course older and more widespread[9].

But then what makes a directional duty the correlate of a right? This is an issue of heated debate in the current literature[10], and luckily it is not the topic of our discussion. What has to be stressed here is that if we want to take the correlativity axiom as valid, we have to narrow its range to, on the one hand Hohfeldian claim-rights, and on the other hand, to directional duties which can be loosely said to be based on *justice*, and not on other normative practices like gift, desert, or thick ethical relationships like love, family or friendship.

## 2.2 The deflationatory argument

Starting from the correlativity of rights and duties, some authors have provided deflationary accounts of rights-talk[11]. Behind these accounts stand two theses. The first – hardly deniable – is that duties, or more generally primary warranties, are essential to moral language. Secondarily, it is claimed that, since any statements of rights can be expressed as a statement of duties, it follows that rights-talk does not express anything original. Rather, rights-talk is redundant, and its origin and development are tied to its rhetorical power. For this reason, rights-talk should be reduced in its pretensions and moral centrality, or it should be even abandoned.

When the surface of this deflationary argument is scratched, it is possible to observe its prejudicial nature. As we have seen, correlativity states a *logical* truth and does not say anything regarding matters of justification or moral priority. What correlativity says is that rights and duties are defined in the same way as «right» and «left», or «wife» and «husband» are defined in ordinary language. In these latter cases, both terms can be taken as primitive to define their correlate, and neither can be considered as more «fundamental» than the other. It is surely still possible to establish a priority between paired terms of this kind, but it must happen for further reasons: for instance, we could say that, according to a criterion grounded on the priority of «what is the cause of», the concept of «parent» is prior to the concept of «offspring», even if the two are correlated[12].

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[9] While the exact turning point regarding the origin of the concept of rights is widely debated, all major historians agree on its late medieval or early modern origin. On the issue see Villey (1964), Tuck (1979), Bastit (1990), Reid (1991), Tierney (1997; 2002) and Van Duffell (2006).

[10] See for example Cruft (2013), Kramer (2013) and Wenar (2013).

[11] See for instance Arnold (1978) and Darby (1999). Deflationary arguments for rights-talk are also provided in Warrander (1957), Narveson (1970), Nelson (1976).

[12] On the issue see Gewirth (1986; 1988). An analogous argument was already hinted in Stoljar (1984: 47).

Correlativity, then, is perfectly compatible with justifications based on the priority of rights as well as with justification based on the priority of duties[13]. Deflationary arguments, in a nutshell, cannot base their strength exclusively on the correlativity, but must appeal to some kind of justificatory or normative priority of duties in respect to rights – as it has be done, for instance, by one of the sternest and sharpest critics of rights-talk, Jeremy Bentham[14]. We will analyze some reasons that could aid in assessing the normative originality of both rights and duties in the following pages – but first we must clarify what counts as *moral conflict* and *dilemma*.

## 3. *Conflicts and dilemmas*

It is customary in the literature to distinguish between *conflicts* and *dilemmas*[15]. A *moral*[16] conflict happens whenever the following conditions apply:

• The contents of two or more than two normative elements do not seem to be compatible[17].
• For some reason it does not seem possible to order these normative elements.

The stall entailed by a moral conflict can be overcome by a *resolution* of the conflict: the agent acts in a way that breaks the stall, usually following what is prescribed by one of the conflicting normative elements. The resolution of a conflict is not necessarily its *solution* – this latter entails that the agent has acted in a way that did not violate any normative elements or challenged her or his integrity or moral dignity.

A moral conflict possesses – at least in theory – one or more solutions, as well as different resolutions. This happens because, as we have said, the incompatibility of the normative elements involved, or their non-ordinability, is

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[13] See Kramer (1998: 26).

[14] While holding that rights and duties are correlatives, Bentham never appealed to this fact in his famous attack on rights. Bentham's arguments were basically *ontological* – rights, in his opinion, were "sons without a father", see Bentham ([1795] 2004: I-334) – and *normative* – that is, grounded on the alleged confusion and troubles caused by rights-talk, as in Bentham ([1789] 1838-43: I; [1816] 1838-43: II).

[15] Bagnoli (2006).

[16] Moral conflicts can be seen as a subset of *practical conflicts*, as morality can be seen as a subset of the practical domain.

[17] In order to avoid unnecessary complication, I will limit the discussion in the rest of the paper to conflicts that involve just two normative elements.

only apparent[18]. The existence of a solution does not prevent an aftermath in the resolution of a moral conflict. The aftermath takes the form of a *moral residue* that could primary have an emotional nature – giving rise to *compunction*, *dissatisfaction*, or *moral stress* in the agent – but could also have a more proper normative nature: from the resolution of a moral conflict could arise some new duty of compensation, reparation, apology, or mere explanation.

A moral dilemma can instead be defined as a situation where the contents of two, or more than two normative elements are *truly* incompatible or cannot be ordered. While one or more resolutions are still accessible to the agent, a dilemma does not provide for any solution. Whatever the agent decides to do, she or he will inevitably break a moral reason of some kind, and thus, there will be a moral residue that coincides with a true moral failure, and will give rise to moral guilt emotions and heavier duties of compensation.

The possibility of dilemmas is widely debated in the literature, and it seems one of those cases where, adapting Samuel Johnson observation on the free-will problem, «all theory is against it, all experience for». From one side it is stressed, on the ground of formal arguments, that dilemmas cannot exist, otherwise we should give up every *rational* interpretation of moral discourse[19]; from the other hand, it is pointed that our moral experience strongly supports the existence of genuine dilemmas[20]. For our present discussion it is neither fit nor useful taking side on this debate. All the cases I will discuss in the following paragraphs will be considered as moral conflicts, and the substantive conclusions that I will reach should not change if the cases analyzed were to be considered as dilemmas.

## 4. *Asymmetric conflicts*

Conflicts can be «asymmetric» or «symmetric». Asymmetric conflicts involve two or more completely different normative elements. Joel Feinberg provides a good example of an asymmetric conflict:

> Suppose that you are on a backpacking trip in the high mountain country when an unanticipated blizzard strikes the area with such ferocity that your

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[18] A moral conflict can, at least in theory, always be resolved by acquiring enough information about the situation. It has to be noted that the acquiring of enough information could be prevented by epistemic reasons: nevertheless, the situation remains a conflict, since a solution does exist, even if it is unattainable.

[19] The first one to have a proclivity for this thesis was Ross (1936). See also McConnell (1976; 1978).

[20] See for instance Williams (1965) or Barcan Marcus (1980).

life is imperiled. Fortunately, you stumble onto an unoccupied cabin, locked and boarded for the winter, clearly somebody else's private property. You smash the window, enter, and huddle in a corner for three days until the storm abates. During this period you help yourself to your unknown benefactor's food supply and burn his wooden furniture in the fireplace to keep warm.[21]

Let us call Federico the backpacker, and Andrea the cabin owner. This situation could be hardly called a dilemma: it is obvious that Federico has a legitimated reason for breaking in into Andrea's cabin, and this latter resolution coincides also with the solution of the conflict.

From a purely formal standpoint, the situation is of a conjunction between two contrary elements of deontic logic: a prohibition, and a permission. In this way, the situation can be defined as a *conflict between two (apparently) incompatible deontic elements.* In the language of deontic logic:

- [1]. $FA$
- [2]. $PA$

Since:

- [3]. $FA \rightarrow -PA$

Then:

- [4]. $PA \, \& -PA$

In order to avoid the contradiction it is necessary to prioritize one of the two deontic elements, either the prohibition expressed in [1] or the permission expressed in [2].

This way of reading the situation as a conflict between deontic elements has the advantage of mapping the web of norms involved, highlighting the crucial incompatibilities, and providing the focus on the possible resolutions to the stall. At the same time, it says nothing about the moral reasons that back up the possible choices, or about the roles assumed by the playing characters: all this reading can tell about this situation is that we are in front of a conflict between an action that could be, at the same time and on different interpretations, forbidden or permitted.

From a purely abstract standpoint, on the other hand, our case-study could be read as a *conflict between principles.* Here «principle» should be simply understood

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[21] Feinberg (1980: 230).

as a general normative reason that does not have a direct reference to a concrete situation. In the case analyzed the conflict involves at least three different principles: *assistance*, *private property*, and *self-conservation.*

Such a high level analysis of the conflict is needed in order to understand the various moral reasons included in the situation, but it can hardly lead to a plausible resolution of the problem on its own. Instead it must be integrated with more precise elements, as principles need to be implemented and lowered on the specific details of the situation.

In-between these two extremes there are many different standpoints that can be used to sharpen the analysis. Each of these standpoints permits us to highlight different details of a moral conflict, and to shape different kinds of possible resolutions. Regarding our case-study, it is possible to individuate three standpoints: Feinberg's example can be read as a) a *conflict between two different duties*; b) as a *conflict between a duty and a contrary reason of the agent*; or c) as a *conflict between two different rights.* I will now analyze each of these readings, in order to show their differences.

## 4.1 A conflict between different duties

According to this reading our case-study is understood as a conflict between two *prima facie* duties. The first duty is Andrea's duty to help someone who is in dire needs — as is Federico — and it originates from the general principle of assistance. The second duty is Federico's duty to not break in and wreak havoc unto Andrea's cabin, and it originates from the general principle of respect for private property. As we have seen from the formal analysis of the conflict, the situation sees a juxtaposition between a permission and a prohibition. The subject of both deontic elements is Federico: the permission derives from Andrea's duty of assistance, while the prohibition derives from his duty to respect private property.

This way of reading the situation does not change its resolution. It is still obvious that Federico does not commit anything morally wrong by breaking in into Andrea's cabin. What is new are the reasons that justify this resolution, and the different roles assigned to the playing characters.

Regarding the reasons used to justify the resolution, this kind of reading directly appeals to only two (assistance and private property) principles, leaving self-conservation on the background as the reason that necessitates Andrea's assistance. The balancing, then, is reduced to the matter of deciding when Andrea's duty of assistance is stronger than his interest in having his private property safeguarded. This leads to an asymmetric interpretation of the the roles played in the story by Andrea and Federico.

Although Federico seems to be the real protagonist of the story – as he is, in fact, the agent who takes the final decision and eventually incurs a culpability of some sort – this reading emphasizes a preeminent importance to Andrea's standpoint. Since he is, at the same time, the owner of the cabin, and the person tasked with the duty of assistance, all the major moral reasons originate from him. Moreover, in this reading, Federico, in order to save himself, has to infringe upon his duty to not disrespect *Andrea*'s private property, and he is legitimized in acting this way because *Andrea* has a duty to assist him in case like this. In this way we implicitly assign a morally predominant role to Andrea, and we give a description of Federico's deliberative process as the balancing of two moral reasons arising *externally* from him. This raises some problems.

On the one hand, Federico's *moral integrity* is threatened. By choosing to break in into the cabin, Federico enforces a *someone* else's duty. From a psychological point of view this can leave Federico with the impression that he is, at the same time, begging, and infringing upon the autonomy of someone else. This is true for at least one point: Federico cannot escape from the situation without having to take on the role of the *victim* and forcing Andrea to step into the shoes of the *benefactor*. This asymmetric attribution of roles can have detrimental effects on the perception of the agent's own integrity and dignity: no one likes – or should like – wearing the clothes of the victim, or of the endangered species.

On the other hand, this attribution of roles devalues Andrea's contribution to the resolution. It is true that this reading seems to endorse wholly his standpoint, and make him, as the «benefactor», the moral hero of the story. Nevertheless, Andrea's willingness to aid Federico is interpreted as a *duty*, devaluing any considerations on the losses and impairments that Andrea could withstand: being the consequence of a duty of assistance, Federico break in does not entitle Andrea with any kind of compensation – as there is no compensation for having discharged a mere duty.

## 4.2 A conflict between a duty and a contrary reason of the agent

In this case, the situation is read as involving, on the one hand Federico's *prima facie* duty to not break in into the cabin, which is originated from the general principle of respecting private property, and on the other hand Federico's strong reason – *a need* – to save himself from the blizzard, which is originated from the general principle of self-conservation. In this case, the standpoint is turned around: here the focus is all on the agent.

It should go without saying that even by this reading the solution to the conflict remains the same. What is new is the way through which the resolution is reached and justified. As I have already remarked, by this reading the moral reasons that should be accounted for originate from Federico. But even if this

reading gives the right weight to Federico's figure, there are at least four shortcomings that deserve to be highlighted.

The first problem that can be individuated is that Federico's choice runs on the verge of seeming arbitrary. His reason for overcoming his duty to respect Andrea's property is advanced as a *need*, and needs, when conceived of as moral reasons are double-edged swords. On the one hand, since Federico has to prefer one of his need to one of his duty in order to resolve the stall, he could be exposed again to the necessity of taking on the role of the victim in order to justify his actions – in fact, he has to advance a need to something to which *he is not entitled*. On the other hand, if on the contrary we interpret Federico's need as a reason sufficient enough to entitle him to break in into Andrea's cabin, then this passage must be further explicated, otherwise it will remain somehow obscure. Needs can be of different kinds and take many forms, and surely most of them do not entitle their possessor with reasons to break duties. Taken as themselves, needs are opaque if used as moral justifications.

The second problem is that, by reading the conflict as a clash between a duty and a need, some kind of «stoicism» on the part of Federico, while not being reasonable, seems to be somehow encouraged. Many people, if confronted between the choice of standing by their duty or satisfying one of their needs tend to choose the first option even if it is questionable on the level of self-interest[22]. This is a by-product of the distinctive weight we give in normative discourse to duties over needs: usually, duties *are duties* since they have to be followed even when they are contrary to the personal interest of their bearer, and this means that *usually* the same action, when it is the subject of a duty, has a «heavier» weight in a balancing process than when it is the subject of a mere interest or need. A natural tendency to generalize this phenomenon can yield, especially in moral sensitive persons, to distorted outcomes in the balancing process – as needs can be underestimated, or duties be overvalued.

A similar distortion in the balancing process can occur for another reason. Needs are easily prone to be misinterpreted by what have been called *adaptive preferences*[23]. A habit of undervaluing our personal dignity can produce a distorted picture of what our wants, interests, and needs are, thus less value and importance are attached to them in front of other people's claims. A person with adaptive preferences, when put through the necessity of choosing between the fulfillment of a duty and the pursuing of a need, can often choose the duty even if there are no overriding reasons to back up this choice. And if she or he chose instead to pursue

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[22] See on the issue Feinberg (1980: 144).

[23] On adaptive preferences see especially Sen (1989; 1992) and the pioneristc study of Elster (1982).

the need, she or he could the same feel unnecessary guilt. Shaping moral issues in terms of need, then, can be detrimental for the self-image of persons in the long run.

The fourth and last problem is that this reading pays little attention to Andrea's loss. It is plainly true, of course, that Federico's need to save his life trumps every patrimonial damage, but this does not mean that Andrea's loss should not to be taken into consideration in the aftermath of the conflict. After all, the same possibility for Federico to save his life *depends* on the existence of something owned by Andrea: had this «something» not existed, Federico's chances of pursuing his need to save himself would had been similarly non-existent. This latter fact is sometimes challenged as a good reason for establishing, on behalf of Andrea, duties of compensation. But this opinion is born, in my view, from a narrow idea of morality as something black or white. Let us say, for the sake of discussion, that Andrea is a poor shepherd and that his cabin is, in fact, a summer recovery for sheep, while Federico is a rich and irresponsible mountaineer in seek of thrill who did not bother to take a look at the weather forecast before embarking in the expedition. While it is true that Federico would still not commit any moral wrongdoing in saving himself by breaking in into Andrea's hut, it would be rather fishy to claim that he would not incur some duty of compensation owed to Andrea. So why should we interpret this case differently from the standard case? It is the new identities that we have assigned to the playing characters that make the outcome crystal clear. We could – and we *should* – of course adapt the entity of the duties of compensation to the circumstances; but even if we apply the principle of marginal utility in order to evaluate the entity of compensation, we should remember that this latter could eventually tend to infinitesimal ground, but it would never reach zero.

## 4.3 A Conflict of Rights

Conflicts of rights are usually described as conflicts over the duties entailed by rights. As it has been correctly noted[24], this case disproofs the latter claim, as it represents a conflict between a duty and a liberty both entailed by rights. It is, in a few words, a conflict between two kind of different rights: on the one hand, Andrea's claim-right to not have his property violated and damaged based on the principle of respecting property, and, on the other hand, Federico's liberty-right to pursue his safety based on the principle of self-conservation. From the claim-right originates the prohibition to break in into the cabin, while the corresponding

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[24] Rainbolt (2006: 158).

permission originates from the liberty-right[25]. It is possible to identify several peculiarities in this reading.

First, by reading the conflict as a clash of rights it is possible to establish a symmetric relation between the two playing characters. Both Federico and Andrea possess a right which expresses a relevant moral reason. This mean that, while one of the two rights has to be evaluated as stronger than the other in order to resolve the stall, nevertheless, both rights maintain their moral force. Apropos, one of the most interesting features of rights-talk is the possibility to discriminate between *violating* a right and *infringing* a right, a distinction firstly analyzed by Judith Jarvis Thomson[26]. A right is violated when one of its primary warranties is overridden without a good moral reason. For instance, Andrea's right is violated if Federico burns the cabin down to the ground just for fun; thus, violating a right entails that a moral wrongdoing in the strictest sense has been done, and secondary warranties are triggered. A right is instead infringed when there are some good moral reasons for overriding one of its primary warranties – as in Andrea and Federico's original situation. Yet, the infringement of a right does not amount to its *cancellation*: the right is «still there», and even if no moral wrongdoing in the strictest sense has been done, secondary warranties are nevertheless triggered. The violation/infringement distinction permits to carefully characterize two diverse moral phenomena that it is often possible to encounter in the resolution of moral conflicts. Violations of rights are moral wrongdoings, and they involve moral responsibility and guilt, in the same way as violations of duties. Infringements or rights, on the other hand, while they are not moral wrongdoings and do not arouse responsibilities or guilt, mark the fact that the owner of the right has nevertheless suffered a loss that ought to be repaired in some way. Thanks to this distinction, then, the reading of the conflict as a clash of rights permits us to take the loss suffered by Andrea seriously, while allowing for the fact that Federico did not commit any wrong on his behalf.

The second peculiar feature connected with this reading is that it permits us to avoid the opacity inherent in the concept of need. Rights – like duties – are normative objects less prone to arbitrariness than needs. In fact, when someone has a right, he is able to invoke a strong moral reason – a reason at least as strong as the one originating from a duty. In this way, there is a lower probability that someone could underestimate her or his reason when this latter is formulated as a right (perhaps there could be instead probabilities that she or he *over*estimates the

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[25] It has to be stressed that liberty-rights do not always give raise to permission (while claim-rights invariably give raise to prohibition or obligation). On the issue see for instance Van Duffell (2012).

[26] Thomson (1986).

reason). While the passage from a need to a moral justification can be problematic, there are no such difficulties when a right is used as a justification[27]. A right, like a duty but unlike a need, is always a *prima facie* sufficient moral reason for justifying a course of action.

The last peculiarity of this reading is associated with the two previous points. Seeing the conflictual situation as a clash between rights permits to focus on the standpoint of the person in need – that is, in this case Federico – without compelling him or her to take on the victim's role. This happens because rights are *claimed*, and they are not the offspring of charity or benevolence. Even if what triggers the resolution of the event is Federico's need to save himself, the relation between himself and Andrea remains symmetric when the situation is read as a conflict between rights. When the balancing is resolved, even if – as it is inevitable in most cases – the reasons of one are weighted more than the reasons of the other, both playing characters stand on the same ground in terms of personal dignity and integrity. This is clearly a strong feature of this reading, and a morally advantageous one, since it permits us to avoid an interpretation of the resolution as a matter of assistance[28], and to prevent the influence of adaptive preferences[29].

## 5. *Symmetric conflicts*

A symmetric conflict happens when the conflicting reasons are identical: they originate from the same principles, have the same normative structures, and share the same contents. The most famous case of a symmetric conflict is «Sophie's choice», named after the situation narrated in William Styron's novel with the same name[30]. Sophie is a mother of two children, and she and her offspring are prisoner of the Nazis; Sophie is put by her jailers in front of a terrible choice: she has to choose which one of her children save, knowing that the other will be executed; if she refuses to choose, both children will be executed. Other examples

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[27] It is sometimes claimed that rights could even justify in some cases «wrong actions»: see Waldron (1981).

[28] Charity, benevolence, and assistance, while surely important for morality, are in the long run degrading both to whose practice and receive them, since they presuppose a strong asymmetry between the parts. Moreover, as claimed by Oscar Wilde in some truly remarkable pages of *The Soul of Man Under Socialism*, charity has the effect of preventing people to scrutinize their condition, and can be thus taken in account for the phenomenon of adaptive preferences. Rights prevent instead this problem, as they assure that vital needs can be claimed as what is due.

[29] On this issue see Sen (1989; 1992) and Wasserstrom (1964).

[30] Sophie's choice was first analyzed and popularized in the philosophical literature by Greespan (1983).

of symmetric conflicts are the «Siamese Twins»[31] and the «Fallen Sailors». In the first case, two Siamese twins have to be put under critical surgery to be separated, otherwise they will both die: the doctor already knows that the surgery will kill one of the two twins, and she has to choose which. In the second case, two sailors are fallen from a boat during a storm. A third sailor above the deck is about to throw them the last life belt on the ship, and has to choose the lucky one.

However similar, these three situations show some important differences. In Sophie's Choice, the agent stands in a symmetric conflict caused by the wrongdoing of other agents. In Siamese Twins and in Fallen Sailors, instead, the conflict is triggered by natural (that is, non moral) causes. Moreover, Siamese Twins differs from Fallen Sailors because, in the former, the agent has to actively kill one of the other two playing characters in order to resolve the conflict, while in the latter this is not the case.

Many authors have argued that symmetric conflicts are genuine dilemmas[32]. On a formal level, all the three precedent symmetric conflicts share the same deontic structure:

- [5]. $O$A
- [6]. $O$B
- [7]. $-\lozenge(A\&B)$

If we accept one or more normative principle usually considered as valid (like *ought implies can*) it is possible from here to deduce contradictions[33]. This means, on some interpretations, that of the two obligations stated in [5] and [6] only one is a *real* obligation. Instead, on other interpretations it means that, since both obligations are to be considered as *real* obligations, then many normative principles usually taken from granted are not exceptionable. We can dispense to take side in this debate. Whether symmetric conflicts are to be understood as dilemmas or not, they will, in any case, have a *resolution* of some kind, and, in particular, they will have a resolution which is *better than the other possible resolutions*. This will be the *solution* to the dilemma for those who believe that symmetric conflicts are tractable, or it will be just *the best that we can do* for those who believe the contrary.

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[31] For an analysis of this situation see Barcan Marcus (1980). See also Railton (1996).

[32] For instance, Barcan Marcus (1980) and Sinnott-Armstrong (1985). A different opinion is advanced in Donagan (1984).

[33] See McConnell (1978).

## 5.1 Symmetric conflicts of duties

If we interpret symmetric conflicts as conflicts of duties, then their strategy of resolution is basically a moral reinterpretation of the only possible positive answer that we can give to Buridan's ass story. Buridan's ass stands exactly midway between two stacks of hay: it is hungry, but it has no good reason to choose one stack of hay instead of the other, so the story tells us that the poor animal will die of hunger. The situation is similar for agents standing in a symmetric dilemma: they have no reasons to choose one duty over the other, and in this way any choice seems impaired. Now, even if Buridan's ass has no reason to choose one stack of hay over the other, it is nevertheless true that it has *strong reasons to choose* (it is hungry): if the ass «realizes» this, it could be moved to do the only right thing it has to do in its situation, that is, *picking randomly one of the two stacks of hay*. The same applies to symmetric dilemma. The sailor standing above the deck with the last life belt on the boat has no reason at all to choose the fellow sailor to the larboard over the other to the starboard: but since she can save at least one life, she has a strong reason to throw the life belt to one of her comrades. And the best she can do is to choose randomly, thus ensuring that the choice is neutral – that is, in this case, *fair*.

Whether we consider this as the *solution* of the conflict, or more soberly, as its best *resolution*, the above reading is based on the idea that the situation can be reduced to a clash of duties. In this way, the case is scrutinized exclusively from the standpoint of *what the agent has to do*, and the standpoints of the other playing characters are somehow ignored. While this reading makes possible a resolution to the stall, it nevertheless describes the deliberative process in a impoverished way: as something similar to what happens, for instance, when we are in front of a supermarket scaffold full of identical goods, and we have to choose, say, to pick a can of beans instead of another. Such a kind of deliberative process does not seem to be philosophical problematic, it seems to be instead rather trivial: nevertheless, this reading reduces symmetric conflicts to this kind of situations.

## 5.2 Symmetric conflicts of rights

People are not cans of beans, and this should explain why the story behind the best resolution to symmetric conflicts, when they are understood as conflicts of duties is not persuasive. The problem does not stand in the resolution *per se*: there are not, supposedly, better choices than choosing to choose in a fair – that is, random – manner, lest there should be a Buridan's ass like tragedy. The problem stands instead in how this result is obtained and justified.

As we have seen discussing asymmetric conflicts, rights-talk permits us to place on a symmetric ground all the moral reasons involved, and to observe the situation from all its different standpoints. No reason or standpoint is privileged

*before* the balancing, even if eventually someone's must. If we now take the conflict outlined in Fallen Sailors, we can see the differences between a reading based on duties, and a reading based on rights. In the first reading, the sailor aboard is confronted by two duties of assistance, each equal in its weight: since the two duties are equivalent, the choice is *indifferent*. In the reading based on rights, things seem to be less plain. In this case the focus is not on the duties of assistance of the sailor above the deck, but on the right to life of the two drowning men. Both of their rights originate strong and equal moral reasons that, unlike the previous two duties, even if identical, do not annul each other. Rights defend the separateness of persons, and originate, in this way, moral reasons that are *independent* and *self-sufficient* from each other. Using a metaphor, the equivalence of two rights cannot be seen as the equivalence between two bills of the same denomination, that can be used indifferently to pay a sum corresponding to their value. Things being equal, a moral reason originating from a right keeps its force even when compared to a moral reason originated from an identical right.

Returning to the original point, rights serve precisely as the moral indicators that people are not cans of beans. However, this means that the resolution to symmetric conflicts outlined before simply does not work. When observed from the standpoint of rights, the choice involved in a symmetric conflict cannot be considered anymore as *indifferent*, because it is not possible to randomly choose which rights to respect and be satisfied with this resolution. As all rights being involved are identical, both rights demand respect. Focusing on the role of the passive playing characters of the situation, rights-talk forces us to frame a better justification than the one provided by the reading based on duties.

## 5.3 Rights and symmetric conflicts

I will not try here to provide a definite way to solve the previous examples of symmetric conflicts. I will only sketch two points that, in my view, supply some further reasons for recognizing the original aspects of rights-talk.

The first point applies to situation as those described in Sophie's Choice. It is, in my view, rather plain that in these cases the agent cannot be held responsible for breaking any rights of the passive playing characters. Sophie is choosing which one of her children save and which one send to the firing squad, but she could not be considered responsible for the death and for the cruelty implied by her choice, since the stage was already prepared by her Nazi jailers. This is also evident from the fact that the rights of Sophie's children do not correlate with duties possessed by Sophie (excepting from the right to be treated fairly in the choice), but instead with duties possessed and ignored by the Nazis. If things stand like this, then,

Sophie has the duty to choose fairly, and this can be considered the best resolution attainable, since no rights are broken by the agent.

The second point applies to cases like those of Fallen Sailors and Siamese Twins, where – unlike in Sophie's Choice – nobody is truly responsible for the setting. Here, the problem highlighted in the previous paragraph is truly present. It seems impossible to apply for the «choosing to choose randomly» resolution if we read the situation from the standpoint of the fallen sailors' or Siamese twins' rights. An answer to this issue could be obtained by elaborating a certain kind of *ex ante* justificatory strategy: that is, we could justify the «choosing to choose randomly» resolution by an appeal to the only rational viable choice that would have been chosen by the passive playing characters if they had been asked *before* what to do in similar cases. It is predictable that most people, if confronted with the possibility of having a chance to be saved from a mortal situation and not having this chance at all, would decide to waive their rights, thus allowing the agents to intervene without the fear of violating someone's right to life – as would happen otherwise in cases like Siamese Twins.

6. *Conclusions*

From this brief survey on moral conflicts and dilemmas, it is possible to extrapolate some conclusions that could be useful for the debate about the relationship and differences of rights-talk and duties-talk. It should be stressed that, while the best resolution of moral conflict does not change, the justification and the aftermath can be heavily influenced by the standpoint adopted. This is particularly evident from the analysis of asymmetric conflicts and further shows that, whatever could be our opinion regarding the importance and priority of rights-talk and duties-talk, the two languages express genuinely different points of view, and are to be considered as two original perspectives on moral situations.

In particular, rights-talk permits us to have a more balanced perspective on the reasons and values involved in a conflict. As we have seen, the reading of a conflict grounded on rights allows for a symmetric placement of all characters in play, who can all be seen as equals, and do not need to identify themselves as victims or benefactors as implied, on the contrary, by a reading grounded on duties. Addressing the conflict from the standpoint of rights also guarantees the safety of the moral integrity and dignities of all the participants in a situation of conflicts, and prevents the phenomena of adaptive preferences. Furthermore, rights allow for a better assessment of the interests involved in a conflict than needs, even if they can sometimes lead to an *overestimation* of their importance by their bearer (while, on the contrary, interest carved exclusively as need could be underestimated). By assuming the standpoint of rights it is also possible to address

the moral claims of compensation that can be advanced by those who are destined to suffer a loss of some kind during the resolution of the conflict.

Regarding symmetric dilemmas, rights-talk imposes a more sophisticated and caring justification for the duty to choose as those articulated by a reading grounded exclusively on duties. While at first blush this may seem to be asking too much, the demand of rights can be met following *ex ante* strategies for situations like the Fallen Sailors or Siamese Twins problems (while Sophie's Choice situations are not problematic in this sense). A reading grounded on rights, while more demanding in terms of justification, has the advantage of genuinely taking the standpoint of those who will suffer under the effect of the resolution of the conflict seriously.

In the end, it must be concluded that rights-talk and duties-talk offer two different perspectives on those particular moral situations that can be called conflicts or dilemmas. This means that an eventual reduction of one language to another (usually, as we have stated, the direction of this reduction is from rights to duties) would actually amount – at least regarding the peculiar issue of conflicts and dilemmas – to an *impoverishment* of moral theory.

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