



What is the Role of Partial Compliance in Moral Theory?

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Abstract

The problem of nonideal theory has been widely discussed in political philosophy in recent times. The problem has received much less attention, however, at the level of individual morality. Since the real world is a nonideal one, the problem is extremely relevant, if moral theory is to guide our action as moral agents. My purpose in this paper is mainly conceptual. I first clarify the distinction between different kinds of nonideal situation (natural accidents or limitations and partial compliance with morality) and how different moral theories face those different kinds of imperfections. Secondly, I try to show that the distinction between the two main sources of imperfection is less straightforward and more complex than might be expected. Finally, I suggest that the role of partial compliance in nonideal moral theory is much more modest and difficult to defend than we might at first think.

1 Introduction

Some people do not pay their taxes. Some cheat, lie or kill. Or they are selfish and unwilling to help people in dire need. Assuming that we live in a world full of these kinds of injustices and wrongdoings, it seems worth asking what our duties are in such an imperfect world; how all this influences what we should do. Nonideal ethics is the part of moral theory which deals with this problem.

John Rawls, who famously introduced the term “nonideal theory” into political philosophy, has distinguished two kinds of imperfection. The actual, nonideal world is, on the one hand, pervaded by natural and historical limitations and by accidents of human life. On the other hand, there is social injustice, that is, institutions are often unjust and individuals often “act unjustly”.¹ At the level of natural, individual

¹ John Rawls, *A Theory of Justice. Revised Edition* (Cambridge, Mass.: Harvard University Press, 1999), p. 245.

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morality, this second kind of imperfection, the fact that people often do not follow their moral duties (e.g. they lie, cheat, harm or fail to help), has been called “partial compliance”.²

The problem of nonideal theory has been increasingly discussed in political philosophy in recent times.³ The problem has, however, received less attention at the level of individual morality. Nevertheless, the question of whether we should behave in the same way in both ideal and in nonideal conditions in general and, in particular, in the context of full and in the context of partial compliance, is extremely relevant, since our world *is* a nonideal one in both dimensions. If moral theory is to guide our action as moral agents, it must say something about this question.

The purpose of this paper is mainly conceptual and propaedeutic. I will not offer normative principles as to how we should behave in situations of partial compliance, but rather try to clarify what it means to say that our moral duties change, or must adapt to, the fact of partial compliance by others. Only in the final section will I briefly advance on the normative side of the matter and show that, if we accept my view in the previous sections, the role of partial compliance in nonideal normative moral theory is much more modest and difficult to defend than we might at first think.

The structure of the paper and its main claims are as follows. In section I, I offer some preliminary remarks intended to define the exact scope of my analysis. I then clarify the distinction between those unfavorable conditions that are the product of natural accidents or limitations and those that are the product of partial compliance with morality, and how different moral theories face those different kinds of imperfections (section II). Sections III and IV offer the main argument of the paper. I show that the distinction between the two main sources of imperfection (natural and historical circumstances, on the one hand, and partial compliance, on the other) is less straightforward and more complex than might be expected. More specifically, I argue that we should change the baseline of comparison that determines whether an act of noncompliance does or does not exert an influence on the content or strength of the moral duties of other agents. We should abandon the ideal scenario as the baseline of comparison (a scenario in which no partial compliance and no natural or historical accident occurs) and adopt a different, counterfactual, baseline that better isolates the fact of partial compliance. In section V, I show some implications of this change by briefly addressing the crucial normative question around partial compliance: what we should do when other members of the moral community fail to comply with their general moral duties. I suggest that, if we distinguish the two sources of imperfection properly, at least one important argument, that I call the

² For a definition of nonideal moral theory, see Rawls, *op. cit.*, pp. 7-8. On natural limitations and historical contingencies, see *ibid.*, p. 216. For a detailed analysis of Rawls’ distinction, see A. J. Simmons, “Ideal and Nonideal Theory”. *Philosophy & Public Affairs* 38, no. 1 (2010): 5-36, pp. 12 ff.

³ For a review of the literature on nonideal theory in political philosophy, see Z. Stemplowska and A. Swift, “Ideal and Nonideal Theory,” in David Estlund (ed.), *The Oxford Handbook of Political Philosophy* (Oxford: Oxford University Press).

“cooperation argument,” is not convincing in assigning a relevant normative role to partial compliance.

2 Narrowing the Focus

For most kinds of moral theories, some aspects of nonideal morality are straightforwardly connected to partial compliance. The fact that a person fails to fulfill a moral duty can modify the deontic status of actions to be performed by other persons (and by the performing agent herself) by way of creating a number of what we might call “reactive obligations and permissions”. The fact that A does something wrong can, in some circumstances, create a number of permissions and obligations. For example, it can create the permission to harm A in self-defense, or to blame A or to punish A. It can also create A’s obligation to ask for forgiveness, feel repentance or regret. It can also generate A’s obligation to compensate the victim and the victim’s permission to demand compensation.

A crucial feature of reactive obligations and permissions is that they are not *general*, but special moral duties and permissions. They are specifically focused on the agent and on the particular action performed by the agent. They arise as a response to the fact of non-compliance, but they do not necessarily modify the general duties and permissions that other persons have.

The emergence of special reactive obligations and permissions is relatively clear in the context of deontological moral theories. For example, for a retributivist it is the fact that A has broken the duty not to kill that makes it (normatively) possible for others to be morally allowed to blame A for killing. For a defender of corrective justice, it is the fact that A has broken the duty not to harm that makes it possible for A to be morally required to compensate the victim for that harm. The same can be posed in terms of rights-based theories. The fact that A has violated someone’s right not to be killed is what makes A liable to be blamed or punished, and the fact that A has violated someone’s right not to be harmed is what makes it possible for A to have the moral obligation to compensate the victim. The ethics of self-defense follow the same lines: the fact that A is about to violate B’s right to life (or to bodily integrity) is what makes B’s harming A, provided some conditions are fulfilled, justified and permissible.

Consequentialism, and in particular act-consequentialism, is less clear in this respect. For example, for a consequentialist it is not exactly true that the reason to blame A is A’s intentional violating the duty not to kill (or A’s violation of someone’s right to life). The ultimate reason is, rather, that blaming A is causally efficient in bringing about good consequences such as, for example, A not doing the same in the future or others being less likely to kill. A’s wrong is not normatively linked to the reactive obligations, but only causally linked. It is the fact that, the world being as it is (including human beings being as they are), blaming (or punishing, or feeling regret, or compensating) is causally efficient in bringing about the good consequences that justify the obligation to blame (or to punish, or to feel regret, or to compensate). But this is obviously contingent. All this suggests that the idea that partial compliance, as such, gives rise to special

permissions and obligations can only make sense within the framework of a non-consequentialist moral theory (or at least a non-*act*-consequentialist theory).

What about *general* duties or permissions? General duties and permissions are those that we have just because we are moral agents, and they are addressed to any other moral agent (and, for some philosophers, to oneself), irrespective of our particular relationship with that agent. Duties such as those to help persons in need, not to kill innocents, not to lie or deceive, are obvious examples. General duties should also be adapted to the imperfections of the real world, and the distinction between the two kinds of imperfections I mentioned in the Introduction seems to be especially relevant in the case of general moral duties. Regardless of our views about their ultimate foundation (be it Kantian, pluralist, or rule-consequentialist), it seems quite obvious that our general duties are *pro tanto* and have to be balanced in the specific circumstances. Both natural accidents and partial compliance are obvious candidates that can be considered relevant to the content and strength of our moral duties. They will be the focus of my analysis in what follows.

3 Different Kinds of Nonideal Moral Theories

Although I want to remain, as far as possible, neutral between different moral theories, I will assume some general features about their *structure*. This structure should not be controversial, at least for those who are not act-consequentialists. According to this view, morality is about following certain rules of conduct. Moral rules have some degree of generality and make up a coherent set of rules or moral code. They are, moreover, the criteria of the correctness of individual actions.

As I will use the concept, a moral rule (R) is a statement that, for a certain action-type X, correlates some of X's factual properties with X having a certain deontic status, in terms of X's being morally required, forbidden or permitted. The deontic status of an individual action x, which is an action-token of X, depends on whether R applies to x or is displaced by another, overriding, rule.⁴

As I suggested in the previous section, on one plausible, and extended, view, moral rules are flexible, in the sense that they are not absolute but are, rather, *pro tanto*. They are sensitive to circumstances. For example, there is a *pro tanto* moral rule that requires us to keep our promises. However, in circumstances in which keeping a promise would produce a serious and irreparable harm, and depending on the content of the promise, we might no longer have that duty.

It is important to notice, however, that not every *possible* moral theory is flexible in this sense. A theory *might* hold that (at least some) moral rules are completely rigid. Let us call this kind of theory "absolutist".⁵ An absolutist believes that there are at least some moral rules that are insensitive to *any* kind of circumstance or change of circumstance: they apply to every possible particular case, and cannot be

⁴ The analysis in this paper could be carried out by appealing to moral reasons, instead of moral rules. For my purposes, however, this would not make a substantial difference.

⁵ See R. Shafer-Landau, "Moral Rules", *Ethics* 107 (1997): 584-611, p. 586-588.

displaced by any competing moral rule. Some versions of deontology seem (at least at first sight) to be absolutist in this sense. Consider Kant's moral theory. This theory is usually seen as containing only categorical rules. As is well known, Kant claims that your perfect duty not to lie is neither weakened nor mutates into a duty to lie when a murderer asks you where his potential victim is hidden.⁶ Even in this extreme situation, the moral prohibition against lying lies in the fact that it violates a perfect duty to your own dignity.⁷

I will assume that absolutist theories are implausible. All moral rules are *pro tanto* and can be displaced by other moral rules or considerations. We have the moral duty not to lie, but if lying is necessary to save a person's life, we may have the permission (or even the obligation) to lie. We have the moral duty not to kill, but if someone is threatening us (or a third person) with lethal harm, we may be allowed to kill them. We have the moral duty to help other people in need with some proportion of our income, but if one of our children suffers from a serious disease that consumes most of our income, we may be exempted from the obligation to help the needy. And so on.

Let us then assume that any plausible nonideal moral theory is non-absolutist (let us call it "flexible"). Flexible moral theories take into account circumstances in which applicable moral rules can change, so that the deontic status of a certain action can change in those circumstances. Let us call "deontic change" the change in the deontic status of an action that has been produced by the fact that a certain moral rule is, in the circumstances, no longer applicable. What are we comparing, when a deontic change occurs? We are comparing the deontic status of an action in "favorable" circumstances, in which the *pro tanto* moral rule in question applies, with the deontic status of the same action in "unfavorable" circumstances, in which the moral rule in question is displaced by other considerations. For example, we can compare the situation in which someone asks me, without bad intentions, that is, without the intention to kill or harm her, where a person is, with the situation in which a murderer poses the same question. Or we can compare the situation in which nobody wants to kill me with the situation in which somebody does. Or we can compare the situation in which I can contribute to the relief of the needy as I have healthy children, with the situation in which one of my children is seriously ill.⁸

⁶ See Immanuel Kant, "On a supposed Right to Lie from Philanthropy," (1797) in *Practical Philosophy*, (ed. by Mary J. Gregor and Allen W. Wood, Cambridge: Cambridge University Press, 1999).

⁷ See Immanuel Kant, *The Metaphysics of Morals* (1785) (Cambridge: Cambridge University Press, 1991), p. 225 ff. I quote Kant here for illustrative purposes only. I am not claiming this is a plausible (let alone the best) interpretation of Kant's moral theory. Beyond this exegetical point, one might think that your permission (or duty) to lie to the murderer is a special, reactive, one, in the sense defined in the previous section. After all, the situation appears to be similar to one of the legitimate defense of the victim. It is surprising that, after telling the truth to the murderer, you are morally allowed to kill him if it is the only way to prevent his killing the victim. But (according to the standard interpretation of Kant) you are not morally allowed to lie to him. For an argument that lying to the murderer is an extension of the Kantian requirement of self-defense, see Michael Cholbi, "The Murderer at the Door: What Kant Should Have Said," *Philosophy & Phenomenological Research* 79, No. 1 (2009): 17-46. Be that as it may, I will assume that your lying to the murderer is not a reactive, special duty or permission, but the deontic modification of a general duty not to lie.

⁸ For a somewhat different, but compatible, classification of moral theories, see DELETED.

The next question is what kind of circumstance can be considered unfavorable, such as to trigger a deontic change. Following the Rawlsian distinction introduced at the beginning, some of those circumstances contain (or consist of) acts of noncompliance by others, whereas other unfavorable circumstances are natural events that cannot be considered right or wrong (as in the case of the illness of my child). To fix our terminology, let us call “partial compliance” and “natural accidents”, respectively, the two kinds of unfavorable circumstances that can be thought to justify a deontic change. A case of partial compliance is one in which one (or more) agent(s) has (or have) intentionally or negligently broken a moral rule. In the case of a natural accident, there is no intentional or negligent violation of moral rules, only unfortunate natural circumstances.

Assuming that we are able to distinguish clearly between these different kinds of unfavorable circumstances, we can also differentiate between two kinds of flexible (nonideal) moral theories. On the one hand, we have theories which hold that partial compliance can never cause a deontic change and that only natural accidents can (let us call them “idealist” theories). On the other, we have theories which hold that not only natural accidents can cause a deontic change but that partial compliance can *per se* cause a deontic change as well (“non-idealist” theories). By calling the first kind of theory “idealist”, I want to suggest the idea that, for such theories, we might have to adapt our general duties to certain kinds of unfavorable circumstances (we are not absolutist), but not to the fact that other people act in immoral ways. Non-idealist theorists, on the contrary, hold that we should sometimes be ready to get our hands dirty by adapting our conduct (not only to natural accidents, but also) to the fact of partial compliance.

4 Complexities of the Distinction Between Idealist and Non-idealist Theories

Unfortunately, distinguishing between idealist and non-idealist moral theories is not simple. The main source of complexity is the fact that there may be cases in which the unfavorable circumstances responsible for the deontic change may contain acts of noncompliance, which, however, are *not* part of the explanation of such deontic change. In other words, it is difficult to isolate the fact of noncompliance as the relevant source of deontic change.

To illustrate this with a simple (if somewhat artificial) example, imagine a theory that claims that, according to the set of moral rules in force, you are morally allowed to drive your car along a street, but if someone jaywalks (violating her duty to cross the street at a designated crossing) you have a duty *not* to drive through the spot where that person is walking (thereby running her over). At first sight, this “theory” seems non-idealist: it is the pedestrian’s noncompliance with her duty to cross at a crossing or on a green pedestrian light that explains the deontic change to your options. It seems to be the pedestrian’s partial compliance that *produces* the deontic change. However, this is not necessarily the case. The jaywalker’s act of noncompliance may well *not* be part of the explanation of why one of your options (driving through the spot where the person is now crossing) has gone from being

allowed to being forbidden. The explanation for this deontic change might be just that a human being is crossing the street through a certain spot, and that she will be run over (and severely harmed) if you drive through that spot. On this reading, the fact that she is violating her duty to cross at a crossing or on a green pedestrian light adds nothing to the explanation of why you should not drive through the spot. This shows that, in order for a flexible theory to be non-idealist, it is not enough for it to allow for deontic changes in cases of noncompliance. It is necessary that the fact that they are events of noncompliance in itself *explains* such deontic changes.

Another way of looking at the same difficulty is by focusing on the baseline with which we compare favorable with unfavorable circumstances. Flexible moral theories claim that our duties change in unfavorable circumstances *in comparison* with more favorable ones. The more favorable circumstances would therefore be the baseline. However, as we have seen, there are two kinds of unfavorable (and favorable) conditions: natural accidents (or the lack thereof) and partial (or full) compliance. In accordance with this distinction, one possible baseline is the ideal, favorable, situation, in which neither of the two kinds of imperfection holds, and the *pro tanto* rule is applicable to the case. In the jaywalker example, this would be the (hypothetical) situation in which nobody jaywalks and everyone crosses the street at a designated crossing on a green light. But taking this situation as the baseline does not properly isolate the fact of the jaywalker's noncompliance. An alternative baseline would be an *unfavorable* situation in which no one acts immorally, i.e., a situation in which *only* natural accidents hold. For example, the pedestrian crosses the street on red light out of necessity (it is for her the only way to prevent herself being killed by a thunderbolt), or because she is attracted by an incredible powerful magnet from the other side of the street. The distinction between these two baselines is relevant for a nonideal moral theory, because it helps identify the precise role of partial compliance in the explanation of the deontic change. If, as would be most plausible, our moral theory tells us that we have to stop the car and not run over the pedestrian in both cases (both when her jaywalking is the product of her noncompliance and when it is the product of a natural accident), then it is not at all clear whether the pedestrian's partial compliance is playing any role in explaining the deontic change. In fact, a theory telling us that we have to stop the car only if the jaywalking is due to an act of noncompliance of the pedestrian, so that we are allowed to run over the pedestrian if the jaywalking is due to a natural accident, would be extremely implausible. The reverse would be (almost) equally implausible, namely, to claim that we are required to stop the car only if the jaywalking is due to a natural accident but not if it was the consequence of an intentional act of noncompliance.

To see this last point more clearly, let us return to Kant's example of the duty of veracity. Let us assume, for the sake of argument, that Kant is right in claiming that we are morally required to tell the truth to the murderer. We might ask, in this case, whether the duty of veracity is insensitive only to intentions, such as the immoral intentions of the murderer, or whether it would also be insensitive to circumstances that do not include any act of noncompliance, but rather a natural accident alone. For example, imagine that the person who is asking you is not a murderer. She is an innocent person, Amy, who is candidly looking for her friend Benn. Unfortunately,

you know that, if you tell Amy the truth by telling her that Benn is standing on a certain bridge, Benn will die, because the bridge is so fragile that, if an additional person steps on it, the person who is already on the bridge will inevitably fall down a ravine. (Amy would not die, only Benn.) For some reason, you are unable to warn Amy about the fragile condition of the bridge. You only can say “yes” or “no”, when Amy asks you if Benn is standing on the bridge.⁹

Regardless of what Kant would have said about this situation, a nonideal moral theory that claims that the duty of veracity remains intact, both when the unfavorable situation is created by someone’s noncompliance (the murderer’s intention to kill in Kant’s original example) and when it is created by a natural accident (the unfortunate fragility of the bridge in my recent example), would be absolutist. In both, you are categorically required to say the truth. But suppose (as we should) that we are not absolutists, and think that in both the fragile bridge scenario and in Kant’s original one you are allowed (and perhaps required) to lie. Would our theory be idealist or non-idealist? In one sense (the first one identified above), it would be non-idealist, because your duty of veracity changes in comparison to the duty you would have in the favorable situation in which there is no partial compliance and no natural accident ensues. For this interpretation, our baseline is the ideal situation in both the moral sense (no partial compliance, no murderous intention) and the natural sense (no natural accident, no fragile bridge).

But with a different interpretation, we might consider our view idealist (or at least not non-idealist). For, although in the murderer situation you are required to do something different *vis a vis* the ideal situation (in which there is no murderer and no fragile bridge), you are required to do *the same thing* as in a similar unfavorable situation in which no act of noncompliance occurs, but only a natural accident (the fragile bridge). This view would be idealist in the sense that partial compliance does not exert any influence *as such*. It does not explain why you have to lie to the murderer. You are required to lie to the murderer not *because* he is a murderer and is about to break his duty not to kill, but *only* because you have the duty to save a human life. And the proof is, precisely, that you would be required to lie in the fragile bridge situation as well, in which nobody acts immorally.

On the other hand, suppose we think that you are required to lie to Amy, but *not* to the murderer. Again, in one sense our view would be idealist, because your duty in the context of partial compliance (faced with the murderer) is the same as in ideal conditions. But in another sense, our view would be non-idealist, because partial compliance by others *does* exert some kind of influence on the explanation of the deontic status of your action. You are required to tell the truth to the murderer, in part, *because* he is a murderer. If instead of this being the reason why an innocent person will die, the reason were the fragility of the bridge, you would *not* be required to tell the truth.

⁹ You might think that your saying “no” would not be a real lie. The reason would be that Amy would have given her consent to be “lied” to. After all, she does not want to kill her friend Benn. But we can imagine a variation of the example, in which Amy does not want to kill Benn but is indifferent towards Benn’s death and, therefore, does not consent to being lied to.

In sum, there are two different baselines with which we can compare a real, unfavorable, situation, in order to establish whether a certain theory is idealist or not. According to one view, the baseline is the ideal situation, in which no partial compliance and no natural accident occurs. If the duty of the agent in the real situation is different from the duty she would have in the ideal situation, then the theory is non-idealistic. According to a different view, the baseline is a counterfactual situation that is identical to the real (unfavorable) one, except for the fact that there is full compliance in it. If the duty of the agent in the real situation is different from the duty she would have in such counterfactual situation, then theory is non-idealistic.

Let us consider a different case which shows the same kind of complexity. Imagine there is a moral rule of beneficence, which requires us to help people in need. If every non-needy person follows the rule, each can meet the duty of beneficence by donating 100 dollars. Now imagine two alternative unfavorable scenarios. In S1, about 40 percent of potential donors fail to donate. Out of egoism, they simply do not comply with the rule of beneficence. In S2, 40 percent of potential donors fail to donate as well, but not because they are egoists, but because they fall so severely ill that it is impossible for them to spend 100 dollars in beneficence. In both scenarios you are among the remaining 60 percent, and you ask yourself what your duty is in each of these two situations. One might think that your duty of beneficence does not change: you always have the duty to donate 100 dollars, no matter what other people do or not do. That would be an absolutist view of the duty of beneficence in this situation. But, again, suppose we think it may change (we are flexibilists). Suppose first that our moral theory says that you have to donate 140 dollars in both S1 and S2. Would our theory be idealist or non-idealist? For one interpretation, it would be non-idealistic, because your duty in unfavorable conditions is different from your duty in ideal ones. But with a different interpretation, our view would be idealist, because your duty is the same in S1 and S2, which means that the fact of partial compliance in S1 is not (necessarily) the explanation of the deontic change (from 100 dollars to 140). The explanation may well be, for example, that needy people have a right to some amount of resources, whatever the source of their misery.

Let us suppose now that our theory claims that in S2 you have to donate 140 dollars, in order to fully compensate the failure of the 40 percent of (sick) people, but in S1 the same moral theory requires you to donate only 100 dollars (as in the favorable situation). Would this theory of beneficence be idealist or non-idealist? Again, for one interpretation, it would be idealist, because in the case of partial compliance you are required to perform the same action as in the ideal situation in which there is full compliance and no one is sick (no partial compliance, no natural accident). There is no deontic change. In another sense, however, our theory would grant a normative role to the fact of partial compliance as such, because your duty would not be the same as in S2, which is identical to S1, except for the compliance/noncompliance of others. In S2, remember, you are required to donate 140 dollars. Therefore, the fact that the failure to donate is an act of noncompliance *does* make a difference, in comparison to S2.

5 Identifying the Moral Role of Partial Compliance

Let us generalize the distinctions made in the previous section by restating them in a more formal way. Let us call a given ideal, favorable, situation, “I-S”. I-S is ideal in the sense that there are no natural accidents and no partial compliance. There are two possible nonideal, unfavorable, situations connected to I-S: one in which there is a natural accident (NA-S) and one in which there is partial compliance (PC-S).¹⁰ Both kinds of nonideal situation might be thought to have the potential to produce a deontic change. Let us assume that everything else is equal in both NA-S and PC-S, except that in NA-S the difference is due to natural accidents and in PC-S to partial compliance. Let us also assume that, since our nonideal moral theory is flexible, if I-S becomes NA-S, our general moral duties change in some way (a deontic change occurs).

Following what we have seen in the previous section, there are two views about when a flexible moral theory is idealist and when it is non-idealist. According to one view, a theory is idealist if, when I-S becomes PC-S, we should do exactly the same as in I-S. The second view is that a theory is idealist if, when I-S becomes PC-S, we should perform the same act as we should in the corresponding counterfactual NA-A.

At this point, it may become apparent that the label “idealist” or “non-idealist” attributed to a theory is not really significant. The important question is which view better identifies the role of partial compliance in the explanation of our duties in real, unfavorable, conditions. In my view, the second view is more plausible, because it does a better job in isolating the factor “partial compliance” as an explanatory factor of a deontic change. To see this let us look at a final example.

Imagine that a very old or disabled person is about to cross the street and you and I have the positive moral duty to help that person. In I-S (the ideal situation), we both help the needy person to cross the street by distributing our contributions in a fair way (we contribute equally, for example). There are two possible nonideal situations, correlated with I-S. One is an NA-S, in which I suffer a sprained ankle, making it impossible for me to help. The other one is a PC-S, in which, for bad reasons, I decide not to help. In NA-S I do not fail to comply with any moral duty, since I am literally unable to help. I break a moral rule only in PC-S. Let us assume that in NA-S (in which I have a sprained ankle) your duty to help changes in some way, for example, by being made more demanding. You have to help the needy person on your own, which places a heavier burden on you. The question is what happens in PC-S (where I intentionally decide not to help).

Suppose that, when I don't cooperate and you remain alone helping the old person, you argue as follows: “it is unfair that I have to carry the increased burden of helping alone. I should be assigned exactly the same duty as I would be in the ideal situation in which you help.” Following this idea might imply, for example, that the old person cannot cross the street, or can only cross part of the street, or that crossing

¹⁰ For the sake of simplicity, I leave aside the possible nonideal situation in which there is both a natural accident and partial compliance.

the street becomes riskier. Since we have assumed that, in the case of an NA-S (in which I suffer a sprained ankle), you would be morally required to carry the whole burden of helping, the question is whether or not the fact that your obligation to help does not change in PC-S represents a deontic change. It seems it does, since it is my failure to comply which alone explains why your duty remains the same as it would be in ideal conditions. In fact, your duty *does* change in comparison to the relevant baseline, namely, the situation (NA-S), which is exactly identical to the actual one, except for the fact that I do not fail to comply. If what we are trying to isolate is the power of partial compliance to change our moral duties, this seems to be the proper baseline.

One might wonder why, in my view, only natural accidents, and not partial compliance, are able to produce a deontic change vis-à-vis the ideal scenario I-S. Certainly, it seems that, compared to the ideal situation I-S, your duty to help the old person only changes in the corresponding NA-S (when I suffer the sprained ankle), but not when I decide not to help (PC-S). However, this is not exactly true. Both partial compliance and natural accidents can promote deontic changes. My main purpose is to determine which is the best way to isolate partial compliance as the explanation of deontic change. And this depends on the terms of comparison or the baseline that we choose. If we adopt I-S as baseline and believe that you have to take up the slack left by my failure both when I disobey my duty to help and when I don't help because of my sprained ankle, the question of what explains your increased burden remains open. Most probably, the explanation will be something like the old person needs to be assisted, or similar. On the contrary, if we believe that you have the duty to assume an increased burden only when I don't help because of my sprained ankle, but not when I don't comply, then my non-compliance does in fact produce a relevant deontic effect on the situation. This effect is, however, as I will suggest in the next section, difficult to defend.

6 The Proper Role of Partial Compliance in Flexible Moral Theories

Once we have isolated the factor of partial compliance, we may face the normative question as to whether it is plausible to justify deontic changes on the basis of partial compliance *alone*. In this final section, I would like to briefly discuss (and reject) one possible argument in favor of the idea that the intentional or negligent violation of a moral rule, as such, can justify a deontic change in the duties of other persons (compared to the corresponding NA-S). The argument is that moral rules are cooperative or associative in nature, and when some members of a cooperative enterprise defect, other members are not required to maintain the same terms of cooperation. Voluntary defection is, therefore, different from a case where the same unfortunate situation is produced by a natural accident (NA-S). In an NA-S, the ties of cooperation are not threatened or called into question. The deontic change that partial compliance imposes upon individuals, *vis-a-vis* the corresponding NA-S, can, in some cases, take the form of an attempt to maintain or reinforce the

cooperative scheme, but, in other cases, it can imply renouncing continuing with such scheme. Let us call this the “cooperation argument”.¹¹

Let us first see how the cooperation argument works in the case of negative duties. In Kant’s example of the duty of veracity, we have seen that his claim that we should tell the truth to the murderer should be considered a case of deontic change, because our duty is different from the duty we would have in a corresponding NA-S (which is the case of the fragile bridge in my example). In that case, the cooperation argument would claim that the deontic change is justified as an attempt to maintain the cooperative scheme consisting of the institution of truth telling.

In the case of positive duties, the cooperation argument might go in either of the above-mentioned directions: it can justify a deontic change both as an attempt to maintain the terms of cooperation and in order to renounce them. Consider my last example once more: you and I have the positive duty to help the old person to cross the street, but I fail to do my part. If we hold that you have to compensate my failure by assuming a more demanding duty, we would probably be renouncing assigning any normative role to my act of non-compliance, because, as I argued in the previous sections, in this case, your duty is the same as the duty you would have if I had suffered a sprained ankle. Let us then imagine that we hold either that your duty remains unchanged or that you are released from your duty to help. In this case, partial compliance would really be playing an explanatory role. Let us now see how plausible this move is.

We might try to justify the first claim (that you have exactly the same duty as in the ideal situation in which both you and I help the old person) by arguing that you are trying to reinforce fair terms of cooperation with respect to the institution of beneficence. On the other hand, if we claim that, given that I decided not to help, you no longer have any duty to help, we might try to justify this by arguing that the ties of cooperation are broken (by me) and therefore you are released from any duty to help. In both cases our nonideal theory would be assigning a genuine role to my non-compliance. However, as I will suggest, that theory would not be very attractive.

In both cases, the cooperation argument seems weak. General moral duties may well have a cooperative or associative dimension, but this dimension does not exhaust their normative force. For example, when rights are involved it seems that these prevail over cooperative considerations. In the case of the murderer, for instance, the right of the innocent victim not to be killed seems obviously to prevail over any attempt to reinforce the truth telling institution. Even when no basic right is involved, the cooperative argument does not seem to carry much weight. In the example of the old person crossing the street, it seems that you have to behave exactly in the same way when I do not cooperate on account of a natural accident (my sprained ankle) as when I fail to do so for bad reasons. It is that person’s need that motivates your duty to help and, if your duty changes in comparison to the ideal

¹¹ One can view this argument as an extension to morality of the “principle of fairness” proposed by Hart and Rawls for society as a cooperative enterprise. See H. L. A Hart, “Are There Any Natural Rights?,” *The Philosophical Review* 64, No 2 (1955): 175-191; Rawls, op cit., p. 96 ff.

situation (in which both of us collaborate) when the actual nonideal situation is due to a natural accident, it seems that the same happens when the actual nonideal situation is due to my moral failure. Partial compliance plays no explanatory role.

7 Conclusion

As I said at the beginning, the failure of others to comply with moral duties may (and in fact always does) imply the emergence of several new duties and correlative rights: the duty to compensate the victim of a harm, the right to blame, the right to punish, the duty to regret, among many others. But these duties are special duties, duties seeking to remedy, in some way or another, the harm perpetrated. By contrast, it is far less clear how acts of non-compliance can, in themselves, provoke a deontic change in our *general* duties, duties that we owe to each other just because of the fact of being moral agents. The question is, of course, a normative one. There is no logical impediment. My point is about how to understand the role of partial compliance. If, faced with an unfortunate situation resulting from the generalized non-compliance of others, we believe that my duty remains unchanged vis à vis the situation of full compliance, we might think that the others' non-compliance has no effect on my duties. What I have tried to show in this paper is that this way of analyzing the situation is misleading. If we accept that, in an unfortunate situation identical to the actual one, except for the fact that it is not the product of partial compliance, but of a natural accident, my duty would indeed be modified vis à vis the situation of full compliance, then claiming that my duty remains unchanged vis à vis that ideal situation *does* imply assigning a role to partial obedience. For my duty did change vis à vis the unfortunate situation resulting from a natural accident. It is the non-compliance of others that makes my duty remain unchanged. Analyzed in this way, it becomes clearer how implausible it is to assign an explanatory role to partial compliance, except in limited contexts of cooperation.

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