

Comment on Barbara Herman's *The Moral Habitat*
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Barbara Herman offers us an attractive picture of morality. As she understands it, the moral enterprise is a practical one, in which the people of a community work together to create a habitat in which people can flourish as free, equal, and rational human beings. A sort of basic framework for this habitat is provided by the fundamental duties of right, which render us free and equal. Some perfect rights and duties, like the duty to keep promises and contracts, the right to have property, or the right to housing, specify more specific conditions we need to operate as free, equal, and rational members of society. Within limits, these duties may be differently interpreted, depending, among other things, on what we see them as being “for,” and on the way the associated institutions work in our society. For example, given what property is for, it is wrong to interpret property merely as an entitlement to exclude others from what is yours no matter what, but what it does entitle you to may vary depending on what other available resources there are for providing the needs of life in a given society. Duties work together as a system. If I understand Herman correctly, imperfect duties can operate directly or can tell us how best to apply perfect duties. Sometimes they outweigh perfect duties. For every duty there is an answer to the question: “what’s it for?” that tells what the duty is trying to achieve. We should look to that answer in determining how the duty should be applied. The system is dynamic and developing; the work of creating a moral habitat is ongoing work, responsive to changing conditions and technologies; the duty to contribute to that work is incumbent upon each of us.

Barbara does not offer this as an interpretation of Kantian ethics, exactly, but she thinks it fits, and apparently thinks this fact is supportive both of the habitat idea and of Kantian ethics. This is a wide-ranging book, so I am not going to attempt a general commentary here. In these remarks I will raise a couple of questions about how well what she says fits with Kant, as well as some other questions about the system.

1. Is there a Categorical Imperative Procedure?

Most of us have learned to associate the three formulas of the moral law in the *Groundwork*, especially the Formula of Universal Law, with a procedure for determining what your duties are. Since maxims are supposed to be universal in form, you test a proposed maxim by seeing whether you can will it as a law that is universal in form without contradiction. Willing a maxim as universal includes willing to act on it yourself at the same time as you will it as a law, and the contradiction, at least sometimes, is between those two volitions. According to what I have called the “practical contradiction” interpretation of the test, the contradiction arises between the efficacy of acting on the maxim yourself and the status of your maxim as a universal law. Suppose your maxim is to get your hands on some needed ready cash by making a false promise—you tell a potential lender that you will repay him next week, so that he will give you the money, when in fact you have no reason to believe you will be able to repay. I believe that Kant means to argue that if everyone attempted to do that, no one would lend money on the strength of promises, which would render your own attempt to get money in that way ineffective. There is a contradiction between willing the maxim to act on in your own case and willing it as a law: if you willed both together you would be willing the ineffectiveness of your own maxim. It is by looking for such contradictions that we determine what our duties are. Hence the procedure.

I admit there are a host of problems here. There are other interpretations of how the contradiction is derived, and they are not without textual support. Some look for a more straightforward logical contraction; H. J. Paton thought we should look for a contradiction among laws teleologically understood. There are also questions about the level of generality at which we should formulate the maxims that we test. Should we test a maxim concerning promises to repay loans, or concerning promises generally, for instance? As

Barbara has herself taught us, there are serious questions about how we are to determine which elements of a situation are morally relevant in a way that makes them belong in the maxim. And there are specific problems about maxims involving the solution of coordination problems. I may decide to go to the grocery store at 10:00 p.m. when there are few other shoppers in order to avoid the crowd, but it would defeat my purpose to will that as a universal policy. But if—a big if—we can solve these problems, we have a test that identifies our duties one at a time; there is some maxim which all by itself either is or is not our duty to act on. That seems inconsistent with Barbara's views about duties working together as a system, each to be adjusted to the way we carry out the others. In any case, Barbara denies that, in the *Groundwork*, Kant even *intended* to be offering us a procedure for determining what our duties are.

As far as what Kant intended concerns, I am unable to agree with this. At the end of Section One, after introducing the Formula of Universal Law, Kant says:

"I do not, therefore, need any penetrating acuteness to see what I have to in order that my volition be morally good. ... I ask myself only: can you also will that your maxim become a universal law? If not, then it is to be repudiated, ... because it cannot fit as a principle into a possible giving of universal law." (4:403)

He also says:

"Here it would be easy to show how common human reason, with this compass in hand, knows very well how to distinguish in every case in every case that comes up what is good and what is evil..." (4:404)

And later in the book, after introducing the three formulas, Kant says:

"One does better always to proceed in moral appraisal by the strict method and put at its basis the universal formula of the categorical imperative." (4:436-437)

To me these are the words of a man who thinks he has given us a method, a "compass" as he put it, to determine what our duties are.

I should note, just because some people miss this, that by Kant's criterion it is permissible to act on a maxim if it *can* be a universal law; if you cannot will a maxim as a law then it is your duty to do the opposite, for the opposite maxim is one that must be a universal law. For simplicity of expression, let me specify that what I will mean by saying that a maxim must be "universal in form" is that it is the sort of maxim that *must* be a universal law. We can all agree, I think, that it is one thing to say that a maxim must be universal in form and another to say that the way we learn *which* maxims are universal in form is by testing them for universalizability. That is the question of procedure. When we think about the existence of such a procedure, it is worth remembering that Kant apparently believed something that I think no one in her right mind believes any more, which is that it is fairly easy to know what our duties are. Notice again that he says things like "I don't need any penetrating acuteness" to see what my duties are, and "common human reason knows very well how to distinguish" ... between good and evil. So perhaps Kant just failed to see how hard it would be to test a maxim that actually identified a particular duty.

Still, I would at least have said that, if we have identified some action as a duty, then we have identified a maxim that is, in the required sense, universal in form, no matter what procedure we use to arrive at it. As we will see in a moment, though, Barbara appears to disagree even with that. But, leaving that aside for now, if we have to take into account the system of duties in order to arrive at a required act, maybe it would be impossible simply to test a maxim for its universalizability. Perhaps, for example, if duties work together, then in order to get something universal, we would have to put information into

the maxim about who is carrying out other relevant duties or how that is being done, and perhaps then testing the result would be just too cumbersome. Still, we must engage in some sort of reasoning to determine what our duties are, and it is a real question whether whatever reasoning we do engage in amounts to the determination which maxim under the circumstances is universal in form.

But as I said a moment ago, I do not think that Barbara would even agree that once we have identified an action as a duty, we have identified something with universal form. At one point she tells us that "although the Moral law is universal, duties are not. They can be species-specific and sometimes even local." (p. 88) If what she means is that a given duty only applies to members of the human species or some more local group, I have to admit I cannot see why that is a barrier to its universality. As far as I can see, what we need for universality is not that the specific required *act* is required of every rational being, but that it is required of everyone in a certain position, where that position can be described as specifically as you like as long as it can be described without the use of indexicals or proper names. The duty could not apply to you as a citizen of Los Angeles, but it could apply to you, for example, as a citizen of a neighborhood that has only one grocery store and in which few people have cars and many people live below the poverty line, and it could apply to everyone in that situation. After all, all of that could be relevant. I find that I am unsure why Barbara thinks duties are not universal, or how that could be the case if the moral law is.

(Paragraph not read on the occasion): Actually, even if you could get a universal principle by somehow including information about how our other duties are carried out, I wouldn't myself think this was the best line for Kant to take. I think that the way to make the Formula of Universal Law work the way it is supposed to work is to start with a maxim with no normative content at all and try to generate the normative content from the universalizability test. So for instance the act that we test should not be "telling a lie"

which is too obviously nearly always wrong, or "telling a joke" which is too obviously nearly always permissible, or anyway not wrong because it is false. We should test the act of "saying something false" for this or that purpose, which is normatively neutral so that we can generate the normative content when we make a law for ourselves to follow in the circumstances at hand. That is because I think Kant means to say that we are the ones who bring normativity to the world by making laws. That would quite different from treating some background configuration of duties as the content of the test.

One more point about the derivation of duties. Barbara thinks that for every duty there is an answer to the question "what's it for?" and she refers to that purpose in her reasoning about how to carry out the duty. I think it is obvious that Kant would agree with some version of this. After all, he gives us the Formula of Humanity as an equivalent to the Formula of Universal Law, but it is an equivalent in which the law is formulated in terms of a value, the value of humanity, rather than formally. Somewhat oddly, Barbara dismisses the Formula of Humanity in this role, saying that "Efforts to generate duties using the idea and formula of rational nature as an end in itself fare no better"... She means no better than efforts to generate duties using the Formula of Universal Law. Yet many of Barbara's explanations of duties seem to refer to the conditions under which we can live as free, equal, and rational beings, and I am not sure how different that is from Formula of Humanity style reasoning.

Categories of Duty

I now want to make a few remarks about the categories of duty. This is obviously an important topic for Herman. Her book begins with the exposition of what are traditionally regarded as imperfect duties and moves on to discuss the ways in which those interact with rights. Here I have a question.

In a footnote in the *Groundwork*, attached to the first set of examples under Universal Law, Kant distinguishes two different distinctions. One is “the usual” distinction between perfect and imperfect duties which appears to be adopted from “the schools.” The other is his own division of duties, reserved for later discussion. He does, however, mention it at the end of the examples when he distinguishes strict, narrow, unremitting duty from wide or meritorious duty. Perfect duties are duties to perform particular acts, while imperfect duties are duties to have ends; narrow duties are also duties to perform particular acts, while wide duties are duties to have maxims. That makes perfect and narrow sound the same, but later we learn that perfect duties are wide if they are duties to adopt maxims of performing particular acts, while narrow duties are duties to perform the acts themselves, regardless of maxim. They are duties of right. The way that the examples are divided up in the *Groundwork* makes it look as if these two distinctions will divide our duties up along the same lines. In the *Groundwork*, the duties not to make a lying promise and not to commit suicide appear to be both perfect and of narrow obligation, while the duties to develop your talents and help others appear to be both imperfect and wide. When we get to the *Metaphysics of Morals*, however, we learn that things are not going to be tidy in that way. The duties of virtue are all of wide obligation—they are all duties to adopt maxims—but some of them are perfect, such as the duty not to commit suicide, while others are imperfect, such as the duties to increase one’s moral and natural perfection. After he talks about duties to the self, Kant talks about duties to others, duties of love and respect. It is, in my view, a bit of a puzzle why Kant does not divide up the duties of love and respect in a similar way, making the duties of respect perfect and the duties of love imperfect.

Kant’s explanation of all this is not his most luminous moment, but it seems to me that there is one way of making pretty good sense of it, although I say this with some hesitation.

But here goes: Kant is perfectly clear that the adoption of an end is a free act. How exactly we are to go about freely adopting an end may not be so clear, but he is in no doubt as to the fact. So I think the duty to do that—to have the end—must be perfect. Kant also is clear that the duties of virtue are all of wide obligation; they are duties to have maxims. So suppose we say of the duties of virtue, that some of them are perfect duties—namely, the duties to have and not to act *against* the ends in question; while others are imperfect duties, namely, the duties to *promote* those ends. When I make my own humanity my end, for instance, I adopt a certain maxim; my duty not to act against that end is perfect, so that I must not commit suicide, while my duty to promote the end is imperfect, so that I must promote my own moral and natural perfection, with discretion about exactly how and how far. Gratitude and sympathy would be imperfect duties, but the duty to avoid ingratitude and malice would be perfect. Failures of respect oppose the dignity and humanity of others, say by mocking them, while failures of love are failures to promote the dignity and humanity of others, say by failing to encourage them. Again, although now I am getting some ways beyond what Kant says, we might say the duty to have the happiness of others as our end includes both an imperfect duty to promote their happiness and a perfect duty to avoid making them absolutely unhappy—unless of course some moral duty makes that necessary.

The distinction between acting against an end and merely failing to promote it is not always clear, but it is possible that this is not a bad thing. It might, for instance, explain some of our confusion about duties of rescue. Perhaps sometimes a failure of rescue really is only failing to save someone, while in other circumstances it amounts to abandoning them to die. The same would apply in the case of some of the other duties I have mentioned. In some cases, for instance, if someone close to you fails to take an obvious opportunity to make you happy, the implications of that might make you positively unhappy, so that perfect duty will be violated after all.

I'm aware that getting a little beyond things that Kant wrote about explicitly here. But for my question it doesn't really matter whether you read this pair of distinctions the way I do or not. My point here is really just that, as far as I could tell, Barbara does not make anything much of Kant's more ramified set of distinctions. She sticks mainly with the notions of perfect and imperfect duty. Since Kant's double-distinction seems to me an improvement on the traditional view, I wonder why she does not take it up.

Animals and Moral Change

What I am going to say next concerns a rather small part of Barbara's argument, but I seem appropriately placed to say it, so I will. In Chapter 6, Barbara mentions that a person's actions and their consequences may be imputed to her, as deeds for which she is responsible, and that this is what it means to say she is a "person" as opposed to a "thing." In a footnote appended to that remark, Barbara says:

"For those agitated by the formula of humanity remark about treating animals as things, this definition matters. The remark is not a claim that there is no morally significant difference between animals and rocks, it is that the actions of animals are not under obligatory law and so not (morally) imputable to them. If imputation is the anchor of Kant's idea of moral responsibility, this is not a controversial claim about animals." (p. 91, fn. 16)

But in the *Anthropology*, Kant says:

"The fact that man can have the idea "I" raises him infinitely above all the other beings living on earth. By this he is a person; and by virtue of the unity of his consciousness,

through all the changes he may undergo, he is one and the same person—that is, a being altogether different in rank and dignity from things, such as irrational animals, which we can dispose of as we please.”(*Anthropology* 8:127)

Here Kant's classification of animals as “things” rather than “persons” is not just a point about imputation, for here he draws the further inference that because animals are things, we may treat them however we please. Although happily Kant doesn't altogether stick with this conclusion when he spells out our duties with regard to animals—he thinks we owe it to ourselves to be kind to them—the remark seems to me to be worth getting a little agitated about.

But there is a larger issue here, concerning moral change, so let me back up a moment. Since at least the 18th century, moral change has been a large issue. We—I want to say “we”, but with some consciousness that it's not always clear who the “we” is—but we have revised our views about the status and rights of working people, non-white people, women, and people with different sexual orientations and practices. Some would put the inclusion of animals in the moral community in the same category. We have also changed our minds about what people may reasonably expect, and especially what they may expect as a right. Women think they have a right to train for the professions. Black people think they have a right to enter and use the same public spaces and accommodations as white people. Gay people think they have a right to marry. Everyone may think they have a right to publicly funded health care. Barbara thinks we have a right to housing.

These changes are of breathless political interest, but from the point of view of moral philosophy, they can be something of an embarrassment. If morality is a matter of reason, how can it change? Utilitarians make a clear place for empirical thought in their ethics: we can always learn what will make the total amount of happiness go up, since at

some level that is a causal matter. It seems unlikely, though, that we suddenly discovered, say, that the total amount of pleasure in the world would increase if we got rid of slavery. How could we not have known that, or if we really didn't know, what discovery put us on to the truth? And in most ethical theories, the ethical truth isn't empirically dependent even in the way it is in utilitarianism. It is—well, then, what?—a priori, perhaps. But if the ethical truth is a priori, why do we discover it in time, at certain moments, as history rolls on? If as Kant says, the ethical truth is a matter of pure practical reason, why didn't we always already know what it is? If we didn't already know it, what made the scales fall from our eyes?

I'm not saying there are no answers to these questions, just that they do seem to require some sort of answer. Why is there room for moral change, and how does it happen? Does moral change imply past error? Or it could it happen in a world in which, up until that moment, people were doing as well as could be expected?

Far from being embarrassed, Barbara Herman embraces the idea of moral change, and posits a duty for all of us to be agents of moral change. And she apparently doesn't just mean that we come to see something clearly that was always at work in our moral ideas. She says:

"Some things can be managed as extensions of known duties. Some could have been anticipated through careful parsing of counterfactuals. But at the limit, the idea of moral practice should include the possibility that we can have new moral requirements, and that our grasp of familiar duties and responsibilities may need to expand or change to reflect new facts and new understandings." (p. 215)

When Barbara talks about animals in this context, she mentions that changing our moral attitudes towards them may *not* involve this kind of genuine deep moral change. She says:

"About race and gender the retroactive defense of not knowing better often doesn't impede negative judgment. What was done was wrong to do. Timelessly so. Ideology, false premises, corrupt reasoning, bad faith behavior. This may be what we conclude about the treatment of animals. There was nothing we didn't know about their suffering, the complexity of their life forms, etc..." (p. 216)

Okay, but what I want to hear more about is the other sort of case, especially if our changing views of race, gender, and species are not examples. What is an example of a "new duty"? What sort of fact or insight leads us to recognize or construct it? How do we know when we've got it right? At how fundamental a level can it be new? If it's not fundamental, why should we call it a new duty rather than, say, a creative derivation from an old fundamental duty? If it is fundamental, how can we recognize it at all? Is the right to housing an example, and if so, where exactly does the new element come in? Barbara may well have answered these questions in her book but I feel like I'd like more clarity. This isn't a challenge; it's simply a plea for more. How does fundamental moral change happen?