

Jahrbuch für Recht und Ethik

Annual Review of Law and Ethics

Band 6 (1998)

Herausgegeben von

B. Sharon Byrd
Joachim Hruschka
Jan C. Joerden



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Themenschwerpunkt:

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Vorwort

In der Zeit vom 27. Juli bis 2. August 1997 veranstalteten die Herausgeber an der Friedrich-Alexander-Universität Erlangen ein interdisziplinäres und internationales Symposium zum Thema „Altruismus und Supererogation“. Der vorliegende Band des *Jahrbuchs für Recht und Ethik* umfaßt – neben dem Artikel zur Rechtsphilosophie Kants – die Beiträge zu diesem Symposium.

An dem Symposium haben teilgenommen: *Marcia Baron* (Urbana), *Manfred Baum* (Wuppertal), *B. Sharon Byrd* (Jena), *Thomas Crofts* (Frankfurt an der Oder), *Daniel O. Dahlstrom* (Boston), *Klaus Dicke* (Jena), *Martin P. Golding* (Durham), *Rolf Gröschner* (Jena), *Russell Hardin* (New York), *Jochen Hoffmann* (Erlangen), *Joachim Hruschka* (Erlangen), *Heidi M. Hurd* (Charlottesville / Philadelphia), *Ulrike Janzen* (Erlangen), *Jan C. Joerden* (Frankfurt an der Oder), *Kristen Renwick Monroe* (Irvine), *Michael S. Moore* (Charlottesville / Philadelphia), *Irina von Schilling* (Erlangen), *Jan Schuhr* (Erlangen), *Peter Stanglow* (Frankfurt an der Oder), *Claudius Strube* (Köln).

Die Veranstalter danken der Volkswagen-Stiftung, dem Universitätsbund Erlangen, der Dr. Alfred Vinzl-Stiftung und dem Bayerischen Staatsministerium für Wissenschaft und Kunst für die Finanzierung des Symposiums. Für die Hilfe bei der Drucklegung dieses Bandes des *Jahrbuchs* danken die Herausgeber insbesondere Frau *Ayke Darius* im Institut für Strafrecht und Rechtsphilosophie in Erlangen und Frau *Heike Frank* im Verlag Duncker & Humblot in Berlin. Die in diesem Band angefügten Verzeichnisse haben Herr *Cornelius Hödlmayr*, Herr *Jochen Hoffmann*, Herr *Tobias Rudolph* und Frau *Irina von Schilling* erstellt, denen die Herausgeber dafür zu Dank verpflichtet sind.

In seinem siebten Band (1999) wird sich das *Jahrbuch für Recht und Ethik* dem Thema „The Human Analysed – Der analysierte Mensch“ widmen. Das *Jahrbuch für Recht und Ethik* stellt im übrigen auf seiner Internet-Seite

<http://www.uni-erlangen.de/JRE>

im Hinblick auf die schon erschienenen und die projektierten Bände weitere Informationen zur Verfügung, insbesondere englische und deutsche Zusammenfassungen der Artikel und Bestellinformationen.

Die Herausgeber

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**The Concept and History
of Altruism and Supererogation**

Duties Beyond the Call of Duty

Heidi M. Hurd

I. Introduction

During the Spring of 1996, more climbers died during a single storm on Mount Everest than ever in its mountaineering history. Among those who barely escaped this fate was, Dr. Seaborn “Beck” Weathers, an amateur climber from Dallas, Texas. Upon descending the 29,028-foot peak, Weathers’ climbing party was overtaken by a brutal storm. Trapped at the South Col by 70-mph blowing snow and -50 degree temperatures, Weathers sunk into a frozen coma, and the Sherpas who finally managed to find him gave him up for dead and returned to the camp below. But nearly 24 hours after the storm began, Weathers remarkably managed to will himself alive and drag his wind-whipped, partially unclothed body to a camp at 20,000 feet. There he lay dying, his face, hands, and feet black with frostbite. Fellow climbers could neither save his life at that altitude nor traverse the treacherous Khumbu icefall to carry him to basecamp 2,000 feet below.

And then something extraordinary happened in the history of Himalayan climbing. Lt. Col. Madan K. C., a rotary wing commander in the Royal Nepalese Air Force, agreed to attempt a death-defying helicopter rescue – to maneuver through air long believed too thin to support flight. Overcoming enormous odds, Madan managed to land his single-engine helicopter near Weathers’ camp on a tiny island of snow surrounded by deep crevasses. But instead of seizing this final opportunity to save his life, Weathers insisted that the pilot devote the flight to rescuing a climber he had never met – Makalu Gao, the leader of a Taiwanese expedition, who lay in an adjacent tent in similarly perilous condition. Out of admiration for Weathers’ heroism, Madan once again invited death to return for Weathers, and today, Weathers lives with his family in Colorado, his nose, toes, right hand, left hand fingers, and parts of his face having been amputated to save his life.

The story of Weathers’ rescue is a breathtaking tale of extraordinary supererogation on the part of two men. Yet, ironically, in its vivid portrayal of the most pure form of heroism that we can imagine, it defies contemporary philosophical explanation. This is because moral philosophy has yet to give a satisfactory account of how praiseworthy actions can be beyond the call of duty. It seems clear that our praise of Dr. Weathers and Lt. Col. Madan is of a moral sort. And yet, if their actions are morally praiseworthy, those actions must have been, in some sense, ac-

tions that they *ought* to have done. Traditional moral theory has consistently held that one is obligated to do what one ought to do. After all, what would it mean to say that one ought to do something, but that one need not do it? Yet the actions of Dr. Weathers and Lt. Col. Madan appear praiseworthy precisely because we think that they were not obligatory.

It is the task of this paper to make philosophical sense of our common conviction that persons can be subject to “non-obligatory oughts” – oughts that enable us to reconcile our praise of Dr. Weathers and Lt. Col. Madan with our sense that what made these men praiseworthy was their willingness to do more than duty required. In Part Two, I shall offer a taxonomy of the sorts of actions to which ordinary moral discourse attaches different moral significance. I shall then examine contemporary attempts to reduce those categories by, for example, collapsing super- and suberogatory actions into morally indifferent permissions. As I shall demonstrate, we have good reasons to reject radical reductionist theories that render confused the categories of evaluation commonly invoked in daily gossip. In Part III, I shall advance a “modest” reductionist argument that seeks to reconcile the seemingly contradictory claims that actions like those of Dr. Weathers and Lt. Col. Madan are beyond duty, and that actions beyond duty are actions that we ought to do. As I shall argue, we are obligated to cultivate virtues that require us to do actions that are not themselves obligatory and that are not made obligatory by the fact that virtue requires them.

II. The Categories of Morally Significant Actions

1. *Six Categories of Common Gossip*

Daily gossip appears to employ three distinct deontic operators in ways that reflect at least six discrete evaluative categories. Two of these categories reflect our obligations; four reflect our permissions. While many moral philosophers have been anxious to declare the rich moral ontology that gossip presupposes promiscuous, it seems to me that if philosophy is to aspire to a comprehensive account of our moral experience, it cannot easily ignore the deontic operators and the taxonomy of moral categories that we take such pleasure in invoking during our daily confidences about one another.¹ In evaluating others' conduct, we presuppose that there are acts of the following six sorts:

(1) Positively Obligatory Acts: Acts that are categorically required. For example, we are obligated to keep our promises (absent the sort of emergency circum-

¹ As Marcia Baron summarizes it, “a category is needed in ethical theory either for its explanatory value, or because it is practically valuable, valuable for (among other things) self-direction, moral education, or the flourishing of a community.” *Marcia Baron*, “Kantian Ethics and Supererogation,” *The Journal of Philosophy* 84 (1987): 237 - 62, 241.

stances that trigger implicit exceptions to those promises), to give aid to our children when they find themselves in need or peril, and to contribute our just share to cooperative enterprises (to pay just taxes, fair union dues, etc.).

(2) Negatively Obligatory Acts: Acts that are categorically prohibited. For example, we are obligated not to kill innocent persons, not to steal, not to rape, not to defame another's good name, etc.

(3) Supererogatory Acts: Acts that are praiseworthy to perform, but not blameworthy to omit. These have been variously described as the objects of "exclusionary permissions" – that is, as acts we ought to do on the balance of first-order reasons for action, but for which there are second-order exclusionary permissions to omit;² acts that go "beyond the call of duty;"³ and acts that are "saintly" or "heroic."⁴ Chestnut examples include the soldier who throws himself on the grenade to save his comrades, the bystander who rushes into a burning building to save an unknown person, and the family who adopts a severely disabled child.

(4) Quasi-Supererogatory Acts: Acts that are praiseworthy to perform and blameworthy to omit. These reflect catch-22 situations in which actors cannot help but act in ways that are morally significant.⁵ Trivial examples abound. The moviegoer who avoids sitting directly in front of those already seated by choosing a worse seat seemingly deserves praise, but would be commonly blamed for the alternative choice. The single person who forces a couple to sit apart by taking one of two remaining side-by-side seats on a train seemingly deserves blame, although his willingness to forgo a window seat to which he is fully entitled would be praiseworthy. The person who brakes pace to hold a door open long enough for someone following to reach the entrance appears praiseworthy, but would be blameworthy for letting the door swing shut. More profound examples include the brother who donates a kidney to his dying sister, the aunt and uncle who take up the task of raising their four young nieces and nephews when a tragic accident results in the death of the children's parents, the student who works night-shifts so as to put himself through college without burdening his financially-pressed parents.

² See *Joseph Raz*, "Permissions and Supererogation," *American Philosophical Quarterly* 12 (1975): 161 - 68.

³ *Gregory Mellema*, *Beyond the Call of Duty*, Albany, N.Y.: State University of New York Press, 1991.

⁴ See *J. O. Urmson*, "Saints and Heroes," in: A. I. Melden, ed: *Essays in Moral Philosophy*, Seattle, Wa.: University of Washington Press, 1958, 198 - 216.

⁵ The term "quasi-supererogatory" is Gregory Mellema's, and for lack of a better characterization of these sorts of actions, I shall employ it here. See *Gregory Mellema*, "Is it Bad to Omit an Act of Supererogation," *Journal of Philosophical Research* 21 (1996): 409; *Mellema* (op. cit. fn. 3), 105 - 129. Since these actions are as accurately characterized as "quasi-suberogatory," it is unfortunate that Mellema's term suggests an asymmetry in their moral status. Still, to call these acts "sub/supererogatory" would be hopelessly confusing. See *Julia Driver*, "The Suberogatory," *Australian Journal of Philosophy* 70 (1992): 286 - 89 (who describes these actions as the product of "morally charged situations").