Moral Dilemmas and Rights

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It is pointless to argue about whether moral dilemmas are possible unless the arguers agree about what a moral dilemma is. It doesn't help to define moral dilemmas in terms that are unclear or disputed. It also doesn't help to ask which definition of "moral dilemma" is the correct one: "Moral dilemma" is a technical term in these contexts, and different philosophers use it to refer to different kinds of situations. Thus, the only reasonable approach is to construct a series of definitions and ask which of these kinds of situations are possible. That is what I will do here. I hope that we will find general agreement on which kinds of situations are possible. If so, then we can move beyond verbal disputes and ask more interesting questions about whether and how the possibilities that do exist are important for moral theory.

I. Moral Requirement Conflicts

In order to construct my definitions, I will start with examples that should not be controversial. It is morally wrong to kill or maim a person just for fun or just because you hate that person. It is also morally wrong to break a promise just because you don't feel like keeping it. And it is morally wrong to lie and cheat just to get ahead in your career. If no such judgments are granted, it is hard to see how to get any moral theory off the ground.

What makes these acts morally wrong? Although much could be said, what is crucial here is the structure of the examples. They have two stages. First, these acts are of certain kinds (killing, maiming, promise-breaking, lying, and cheating) that create a presumption against them, so they need an adequate justification. Second, there is no adequate reason for acts of these kinds when the only reason to do them is that the agent will have fun or hates the victim or feels like doing the act. These kinds of reasons are not enough to overcome the presumptions against such acts.

In order to capture this kind of moral presumption, I will say that:

An agent violates a moral requirement when the agent does an act that it would be morally wrong for the agent to do if the agent had no moral reason to do the act.

For example, I violate a moral requirement if I kill a person even when this is necessary to prevent him from killing me, since my act would be morally wrong if I did not have this reason to kill him. Counterfactuals are tricky, but the idea here is simply to ask whether the act would be morally wrong in a situation as much like the present one as possible, except that all positive moral reasons for the act are removed. This counterfactual will hold when the act is of a kind such that acts of that kind are morally wrong unless they are justified. An act of such a kind violates a moral requirement even when it is justified.

The term "requirement" might seem too strong. If so, just substitute "obligation" or "duty" or "constraint." Some of these terms are relational, so substituting them will require grammatical changes, but it will not affect my main points. What matters is not the word but the definition. The point of defining requirements by what would be wrong is to distinguish moral requirements from other moral reasons, such as a moral reason to contribute to a specific charity, to which it would not be morally wrong for an agent to fail to contribute, even without a moral reason to do so. Moral theorists often disagree about which facts are moral reasons and which facts create moral requirements, but there are some clear cases, and every plausible substantive moral theory must assign these roles to some facts.

This definition of a moral requirement is the main tool that we need to construct a series of definitions of moral dilemmas. First:

A weak moral dilemma is any situation in which the agent cannot avoid violating some moral requirement or other.

A situation fits this definition if each available alternative would be morally wrong if the other alternatives were not also problematic, so each has the kind of feature that I defined as a moral requirement. It is not always clear which situations are weak moral dilemmas, but it is clear that some situations are. Just consider the proverbial runaway trolley: the driver will kill one innocent bystander if she turns the trolley and another innocent bystander if she does not turn the trolley. Either act would be wrong if the other track were clear. Conflicting promises also fit the bill. So nobody could reasonably deny that weak moral dilemmas are possible.

Since moral requirements can conflict, we sometimes have to ask whether either moral requirement overrides the other in a morally relevant way. Roughly:

One moral requirement overrides another if and only if they conflict and the first is morally stronger.

Judgments about what overrides what are often controversial, but some obligations do clearly override others. For example, if I have to drive my car in order to pick up my kids on time, the moral requirement for me not to run into the pedestrian overrides the moral requirement for me to pick up my kids on time. Such situations are still weak moral dilemmas, but they are resolvable.
A more restrictive definition of moral dilemmas would exclude resolvable conflicts of moral requirements:

A strong moral dilemma is any situation in which the agent cannot avoid violating an overriding moral requirement.\(^5\)

For a situation to fit this definition, every available alternative would have to violate a moral requirement that is overriding. However, if one requirement is morally stronger, the other is morally weaker, so it cannot also be morally stronger. Since terms like “stronger” and thus “overriding” refer to asymmetric relations, strong moral dilemmas are obviously impossible.

The only real controversy lies between weak and strong moral dilemmas. There are several intermediate possibilities, but the most prominent and important one is this:

A moderate moral dilemma is any situation in which the agent cannot avoid violating a non-overridden moral requirement.\(^4\)

A moderate moral dilemma can also be described as an unresolvable conflict of moral requirements.

This moderate kind of moral dilemma is what most defenders of moral dilemmas want to defend. Opponents often deny this, however, so it is worth quoting a few official definitions of moral dilemmas by their defenders: Thomas Nagel defines moral dilemmas as situations in which “there is decisive support for two or more incompatible courses of action or inaction . . . since either choice will mean acting against some reasons without being able to claim that they are outweighed.”\(^6\) Similarly, Bas van Fraassen defines a moral dilemma as “a conflict between what ought to be for one reason and what ought to be for another reason, which cannot be resolved in terms of one reason overriding another.”\(^7\) Third, Bernard Williams calls a moral conflict tragic when “an agent can justifiably think that whatever he does will be wrong: that there are conflicting moral requirements, and that neither of them succeeds in overriding or outweighing the other.”\(^8\) These quotations show that other defenders of moral dilemmas also have in mind moderate moral dilemmas.

So, are moderate moral dilemmas possible? It is usually hard to prove that a moral conflict cannot be resolved, but there are some ways to rule out any overriding. For example, a trolley driver might run over one person if she keeps pressing down on a lever and another person if she lets up on the lever. (The lever ensures that both alternatives are positive actions.) No resolution is possible because there is no morally relevant difference between the alternatives. Such symmetrical cases are rare, but asymmetrical cases can also be unresolvable. For example, suppose that a group wants to hold a protest in a small town, and the town clerk must decide whether to issue a permit. It would be morally wrong for the clerk to refuse to issue the permit if the clerk had no reason to refuse, so there is a moral requirement for the clerk to issue the permit. However, it would also be morally wrong for the clerk to allow a clear and present danger in the town if the clerk had no reason to allow it, so there is a moral requirement for the clerk not to allow the clear and present danger. Which of these moral requirements overrides? That depends on the degree of danger. The moral requirement to issue the permit overrides when the danger is small. But, if the danger to the town is clear, present, and large enough, then the moral requirement not to allow it overrides. Different people will disagree about how much danger is needed to override, but everyone should admit that sometimes it is too dangerous to issue the permit. Now, since each moral requirement overrides at one end of the continuum of dangers, there must be at least one point in the middle where neither moral requirement overrides. People might disagree about where such a point is, but there must be some such point. At that point, the conflict is unresolvable.\(^9\)

This conclusion is controversial. Many opponents insist that the agent in such a situation is not morally required to adopt either alternative alone but is morally required only to adopt the disjunction: either one alternative or the other. This is correct in a way. In an unresolvable conflict, the agent does not have an overriding moral requirement to adopt either alternative alone but does have an overriding moral requirement to adopt the disjunction. However, that shows only that the situation is not a strong moral dilemma. It does not show that the agent cannot have a non-overridden moral requirement to adopt each alternative separately, which is all that is necessary for the situation to be a moderate moral dilemma.

There are also formal arguments that try to derive a contradiction from the definition of moral dilemmas. Here's one:

\[(\text{1.1}) \quad \text{A} \land \text{B} \land \neg \text{Can(A \land B)} \quad \text{the definition of a moral dilemma} \]
\[(\text{1.2}) \quad (\text{A} \land \neg \text{B}) \rightarrow \text{B} \land \neg \text{A} \quad \text{the agglomeration principle} \]
\[(\text{1.3}) \quad \text{A} \land \text{B} \rightarrow \text{Can(A \land B)} \quad \text{“}\rightarrow\text{“ implies “can”} \]
\[(\text{1.4}) \quad \text{Can(A \land B)} \land \neg \text{Can(A \land B)} \quad \text{from (1.1)-(1.3)} \]

“A” and “B” are action sentences; “Can(A)” stands for “The agent can make A’s true”; and “\neg”, “\rightarrow”, and “\land” stand for conjunction, negation, and material conditional, respectively. This makes the argument form valid, but whether the premises are true depends on what “\land” stand for. What is in the black box? If “\land” is replaced by “there is a non-overridden moral requirement,” then agglomeration or (1.2) fails. To see this, consider a runaway trolley that will run over a father, a mother, and their ten children if the driver does nothing, will run over only the father if the driver turns left, and will run over only the mother if the driver turns right. These are the only alternatives, and the brakes fail. On my definition, the driver has a moral requirement not to turn right and a moral requirement not to turn left, since to turn either way would be morally wrong if another track were clear. And neither requirement is overridden by the other, assuming there is no morally relevant difference between the mother and the father. Nonetheless, even if there is a moral requirement to do the conjunction (not to turn right and not to turn left), this moral requirement is overridden by the larger number of lives that would be lost by not turning either way. Thus, there is no non-overridden moral requirement to do this conjunction, so agglomeration (1.2) fails.\(^9\) Of course, agglomeration fails in this...
case only because the moral requirements conflict, so (1.2) cannot fail in this way if "" implies not ought not or permitted:\n(2.1) A & B & ~Can(A&B) the definition of a moral dilemma
(2.2) [B & ~Can(A&B)] ——> ~A closure principle
(2.3) A ——> ~A "" implies ""—A"
(2.4) A & ~A from (2.1)—(2.3)
This argument form is valid, but whether the premises are true depends on what "" implies for. Again, what is in the black box? If "" stand for ""there is an overriding moral requirement,"" then (2.3) has to be true, since there cannot be both an overriding requirement for A and also an overriding requirement for ~A. Nonetheless, if "" implies ""there is a non-override moral requirement,"" then (2.3) fails, since there can be a non-override moral requirement for A and also a non-override moral requirement for ~A, as in symmetrical trolley cases. Consequently, this argument, like the previous ones, rules out strong but not moderate moral dilemmas. Since there are no arguments against moderate moral dilemmas, and many examples seem to be moderate moral dilemmas, I conclude that moderate moral dilemmas are possible.
So what? What does this possibility show? Some philosophers try to use moral dilemmas to argue that morality is irrational in some way that rules out moral theory in general. Strong moral dilemmas would show this, since they would introduce contradictions, which would imply every moral judgment and its denial. But moderate moral dilemmas do not imply anything this extreme, since they do not imply any contradiction or detrimental kind of inconsistency. To this extent, my position is deflationary. Moral dilemmas are not as revolutionary as some have claimed them to be.
Nonetheless, moderate moral dilemmas do have important implications. The most important here is that they limit the aspirations of moral theory. Some moral theorists seek completeness in the sense of univocal advice in each situation to which morality is relevant. This kind of completeness is attainable if moderate moral dilemmas are possible. But that doesn't show that there is anything wrong with moral theory. Some might like a moral theory to give univocal advice in every conflict, but the lack of univocal advice is not a defect if the demand for such advice is unreasonable. A moral theory that gives no univocal advice in unresolved conflicts is no worse than an aesthetic theory that does not pick one novel as the best when one novel is more profound but another is more fun to read, or an economic theory that does not say which investment is better when one investment has a low chance of a high return and another has a high chance of a low return. Such theories are not useless or defective just because they do not resolve every conflict.
Besides, a moral theory that includes unresolved conflicts can in principle still be complete in a different way: it can capture every moral truth. Such a moral theory can still say when we have moral requirements, when they conflict, and when conflicts are resolvable or not. Of course, no actual theory could in practice capture every moral truth, but the point here is just that the lack of resolution in some conflicts need not be a failure to include any true moral judgment, so a moral theory that includes unresolved moral conflicts is in no worse position to capture truths than any other moral theory.
In fact, there would be something wrong with a moral theory that did resolve conflicts like those above. When moral requirements are symmetrical or incomparable, neither is overriding, so a moral theory that favored one of the requirements would fail to capture the truth about the relative strength of the conflicting moral requirements. Constructivists might object that there are no truths about the strengths of moral requirements apart from their rankings in an ideal moral theory. However, defenders of moral dilemmas can still argue that an ideal moral theory would not rank either moral requirement above the other when they are symmetrical or incomparable. One reason is that, in order to resolve such conflicts, moral theorists would have to resort to arbitrary and artificial devices. This arbitrariness would cast doubt on the whole theory, or even on the whole enterprise of moral theory. That makes it better for a moral theory to admit its own inability to resolve all conflicts. So both realist and constructivist friends of reasonable moral theory can and should be friends of moderate moral dilemmas.

II. Moral Wrongs Dilemmas
Critics sometimes respond that there is more to moral dilemmas than just conflicts of non-override moral requirements. In particular, moral dilemmas are often defined directly in terms of "wrong":
A moral wrong dilemma is a situation in which the agent cannot avoid doing something morally wrong.
Is this kind of moral dilemma possible?
That depends on how "wrong" is used here. If the term "wrong" is used so that an act is morally wrong only when it violates an overriding moral requirement, then moral wrongs dilemmas are the same as strong moral dilemmas, so they are impossible for the same reasons. In contrast, if the term "wrong" is used so that an act is morally wrong whenever it violates a non-override moral requirement, then moral wrongs dilemmas are the same as moderate moral dilemmas, and they are possible for the same reasons.
Which use is correct? Ordinary speakers usually reserve the term "wrong" for acts that violate overriding requirements, but they also often say things like "There is something wrong about that" or even "Sometimes you should do what is wrong," and they talk about wrongdoing someone or doing someone a wrong. In such contexts, the term "wrong" does not seem to be restricted to violations of
overriding requirements. So common usage is not determinate enough to settle this uncommon issue. And philosophical usage in discussions of moral dilemmas is not much more determinate.

Of course, those who insist on denying the possibility of moral wrongs dilemmas can always formulate another definition of “wrong” that makes them impossible. For example, Foot argues against moral wrongs dilemmas on the grounds that “wrong” as understood in moral contexts applies to actions that count against a person’s goodness.\(^4\) I doubt that “wrong” is always used as Foot claims, but this might be how some people use it in the definition of moral wrongs dilemmas. If so, unresolvable moral wrongs dilemmas are impossible, since an agent in an unresolvable conflict always can violate one non-overridden moral requirement in order to fulfill another, and that action would not count against the agent’s goodness (although it might count against her goodness that she got herself into the dilemma). This impossibility does show something about conflicts among moral judgments about persons, or even about blame and virtue, but it does not show anything about conflicts among moral requirements, which are about acts rather than persons. Consequently, a defender of moderate moral dilemmas should simply agree that moral wrongs dilemmas are impossible on such uses of “wrong” and then go on to show why other kinds of moral dilemmas are still important.\(^5\)

III. Moral Residue Dilemmas

When critics claim that there is more to moral dilemmas than to unresolvable conflicts of moral requirements, they might not just rely on terms like “wrong.” Instead, their point might be that each act in a moral dilemma is supposed not only to violate a non-overridden moral requirement but also to leave some moral residue. Much of the debate about moral dilemmas has been concerned with moral residue or remainder, which includes moral remorse or guilt feelings, as well as obligations to apologize, explain, or compensate after the act, or to seek a release in advance. However, moral residue is normally used as evidence for moral dilemmas\(^6\) rather than as part of a definition of moral requirements, wrongs, or dilemmas. Nonetheless, the notion of residue could instead be built into a definition of moral dilemmas.\(^7\) One way to do so is this:

A moral residue dilemma is a situation in which an agent cannot avoid doing something that will justify some moral residue.

Other possibilities are to add a clause about justified residue to any of the previous definitions of moral dilemmas.

Such definitions in terms of residue would not be equivalent to any of the previous definitions, since, as opponents of moral dilemmas often point out, moral residue is not owed or even appropriate after every violation of a moral requirement. Suppose that I promise to meet you for a casual lunch, but I break my promise in order to save someone’s life. Later you tell me that, if we had met, we would have both been killed by a bomb in the restaurant. It would then be odd for me to feel bad about breaking my promise or to say, “I’m sorry. I’ll make it up to you.” So I grant that some violations of moral requirements leave no moral residue. Indeed, even some unresolvable conflicts of moral requirements will not be moral residue dilemmas. Thus, the possibility of moderate moral dilemmas does not imply the possibility of moral residue dilemmas.

So, are moral residue dilemmas possible? It seems so. Suppose that Ginny’s daughter cuts herself so badly that Ginny needs to take her to a doctor. The only way to get there soon enough is to drive, but the driveway is blocked by construction, so Ginny has to drive over one neighbor’s flower garden or another neighbor’s flower garden. She has seen both neighbors work long and hard on their gardens, both entered a flower show next week, and both have told Ginny many times not to let her child play close to their flowers. But Ginny must get her daughter to the hospital, so Ginny drives over the garden to the left. Afterward, she seems at least justified in feeling remorse. She also seems to owe an apology and some compensation to her neighbor. Since the situation is symmetrical, the same responses are justified if she drives over the other garden to the right. So this moderate moral dilemma is also a moral residue dilemma.

Critics often respond that it is not remorse but only regret that is justified in such cases. That depends on what you mean by “regret” and “remorse.” Ginny is not justified in feeling remorse if remorse implies a belief that she violated an overriding moral requirement or that she is a bad person. In contrast, Ginny is justified in feeling remorse if remorse implies only a belief or a quasi-belief\(^8\) that she chose to violate a moral requirement (or a non-overridden moral requirement). Ginny does believe that it would have been morally wrong for her to drive over her neighbor’s garden if she had had no justification—if her child had not needed a doctor. Her neighbor did not give her permission to drive over the garden (and possibly would not have given permission if asked). And Ginny also has no excuse, since she was able to drive the other way, was not forced or coerced to drive the way she did, and knew the effects of her choice. That is why she should feel more than an uninvolved stranger who feels had just to see the ruined garden. For these reasons, the appropriate feeling for Ginny is not just regret. If we cannot call it “remorse,” we need a new term. Marcus reports that Rawls once suggested “regorse.” But I prefer to continue to call it “remorse,” and just explain what I mean by “remorse” here, namely, the kind of bad feeling that results from one’s belief or quasi-belief that one chose to violate a moral requirement.

Another way around this problem is to turn to other kinds of moral residue. If the neighbor calls and asks Ginny what happened, she should not say just, “I drove over your garden.” She at least ought to tell her neighbor why she drove over the garden. She also seems to owe an apology and some compensation. If Ginny does not compensate, her neighbor ends up paying the costs of getting Ginny’s child to the doctor. This shift in costs is unfair, and that is why Ginny has to compensate.\(^9\) The same holds if she drives over the other garden, but not if she is a mere bystander. So there is some moral residue, whichever garden she destroys. That is enough to establish the possibility of moral residue dilemmas, whatever one thinks about remorse.
IV. Rights

How does all of this apply to rights? Moral rights are among the most important moral requirements, so it is also important to determine whether moral rights can conflict. This issue turns out to be very complex.

In general, moral rights conflict when someone has no alternative that does not infringe either one moral right or another. Such conflicts make up a new kind of moral dilemma:

A moral rights dilemma is a situation in which the agent cannot avoid infringing some moral right.20

A moral rights dilemma is then unresolvable when neither of the conflicting moral rights is overridden.

Not all moral requirement conflicts are moral rights conflicts. The reason is simple: not all moral requirements involve moral rights. Some acts (such as cheating on taxes) violate moral requirements and are morally wrong, even though they do not violate any moral rights of any specific individual. Consequently, even if some moral requirements can conflict, as I argued, those moral requirements that involve moral rights might still not be able to conflict. The possibility of moderate moral dilemmas does not imply the possibility of moral rights dilemmas.

So, are moral rights dilemmas possible? People often talk about conflicts of rights, but such common talk might be loose or mistaken, so we need to look at arguments. In order to show that (unresolvable) moral rights dilemmas are impossible, one would have to point to some special feature of moral rights that prevents them from conflicting (unresolvably). There are two main candidates for this role. First, rights are supposed to have a special strength. Second, rights are often supposed to imply clusters of duties for different people. I will look at these two features in turn. I will focus on concrete moral rights, since these are the kinds of rights that conflict in moral rights dilemmas.

The Strength of Rights

First, it is common to claim that rights are especially strong in that rights override other kinds of requirements, utility in particular, except possibly in extreme cases.21 If rights are strong in this way, then some or all conflicts between rights and mere utility are resolvable. However, this tells us nothing about what happens when rights conflict with other rights, since then we have especially strong requirements on both sides.

The only way to rule out all conflicts between moral rights would be to claim that all concrete moral rights are absolute. Some do seem to go this far. For example, Bentditt claims, "If the right exists at [time] t, then it cannot be overridden, or non-accorded, or in any way made inoperative except as the right-holder wishes not to act, or insist on it. . . . And this means, I think, that a right that one has at time t is absolute."22 Bentditt infers that concrete moral rights cannot conflict.

But can absolute rights conflict? That depends on what "absolute" means. There can not be conflicts among rights that are absolute in the sense that they override everything that they conflict with. Such conflicts would be strong moral dilemmas and so impossible. However, sometimes, as in the above quotation from Bentditt, rights are called "absolute" because they cannot be overridden. Two rights that are absolute in this sense could conflict. Neither would be overridden, but that only shows that the conflict is irresolvable, and we have already seen how irresolvable moral conflicts are possible. Thus, the only way to rule out all conflicts between moral rights would be to claim that all moral rights are absolute in the sense of overriding.

There is no reason to accept that strong claim, and there are plenty of reasons to deny it. Thomson argues against absoluteness with a simple example: "Let us suppose that A owns some land and that he has not . . . given B permission to enter any part of it. . . . Suppose now that B's child falls seriously ill, and that by far the shortest way from B's house to the hospital lies across a corner of A's land."23 In this case, according to Thomson, A still has a right against B that B not enter A's land, but this right does not override (and, indeed, is overridden by) B's moral requirement to help his child. So not all rights are absolute in the sense of overriding.

In response, Bentditt denies that A has any right that B not enter A's land under these circumstances. However, Thomson argues that B does have (1) a duty to ask A for permission to cross the land if B can ask without cost, as well as (2) a duty to rectify or compensate for any harm done to A's property in crossing it; and the best account of why B has these subsidiary duties (1) and (2) is that B still violates a right of A even when that right is overridden. Bentditt tries instead to explain such duties of compensation by "the having, using, destroying, depriving, or whatever of another's property, so long as nothing in the affair made it yours or made it cease to be his."24 However, to say that something is "another's property" is not to describe physical possession but is instead to ascribe certain rights to him. And no permission need be sought or compensation paid if the property does not include a right to prevent the relevant use by others, such as when B has a right of way to cross A's land. Thus, Bentditt's explanation in terms of property does not really avoid referring to rights that are overridden. This leaves no reason to believe that all moral rights are absolute or that unresolvable conflicts between such rights are impossible.

Claims, Privileges, and Powers

Even though the strength of rights does not exclude unresolvable conflicts, something else in the nature of rights still might exclude conflicts or ensure resolution. One possibility is that rights involve complex clusters of duties of and to different people.

In his judy famous discussion of rights,25 Hohfeld distinguishes claims, privileges, and powers. Since Hohfeld defines these categories in terms of duties rather than requirements, I will do so too.

The first category is claims:
X has a claim against Y that Y do A =
Y is under a duty to X to do A.

For example, Nick has a claim against Kalleen that Kalleen teach Nick if and only if Kalleen is under a duty to teach Nick.26
The second category is privileges:

X has as regards Y a privilege of doing A =
X is not under a duty to Y not to do A.

For example, Tom has a privilege as regards Susan to stay in bed if and only if Tom does not have a duty to Susan not to stay in bed.27
Privileges are defined negatively, whereas claims are defined positively. And claims are defined by duties of Y, the claim-owner, whereas privileges are defined by duties of X, the privilege-owner. Despite these differences, claims and privileges are closely related. X has a claim against Y that Y do A if and only if Y does not have privilege as regards X that Y does not do A.28
The third category is powers:

X has a power over a claim or privilege = X has the ability to do a certain kind of act that will alter that claim or privilege.

For example, if Frances has the ability to sell her car to George, then she has the power to destroy her claim against George that he stay out of the car, to give George a claim against her that she stay out of the car, and thereby to destroy her privilege with regard to George that she enter the car. The ability to promise also confers moral powers.

These three categories are basic, but more notions can be defined by reference to them. For example, an immunity is simply the negation of a power, so it is an inability to alter claims and privileges.

There are also more complex clusters of claims and privileges and their negations. One important case is liberties:29

X is at liberty with regard to Y that X does A =
X has a privilege as regards Y that X does A, and
X has a claim against Y that Y not interfere in a certain range of ways with X's doing A.

For example, Joe is at liberty with regard to Ken to go to the church of his choice when not only does Joe have no duty to Ken not to go to that church, but Ken also does have a duty to Joe not to interfere in some ways with Joe going to that church. Of course, Ken has no duty to Joe not to buy the church and then lock the door, or not to refuse to let Joe borrow his car, even when these acts would interfere with Joe's going to church. That is why the definition of a liberty refers to "a certain range of ways."

Many more examples can be analyzed as clusters of claims, privileges, powers, and their negations. It is not clear whether all rights can be understood in terms of these three basic categories. Thomson finds this idea "very plausible,"30 and I can't think of any counterexamples. All possibilities seem to be covered, since claims, privileges, and powers include duties, denials of duties, and changes in duties for the affected parties.

Conversely, it is not clear whether all of these categories are rights. Hohfeld claimed, "The term 'rights' tends to be used indiscriminately to cover what in a given case may be a privilege, a power, or an immunity, rather than a right in the strictest sense."31 This seems to suggest that the term "right" changes its meaning for each different kind of cluster. Such extreme ambiguity in common language should be hard to stomach.

A simpler view would look for a common core to all rights. My hypothesis is that rights are claims that others not interfere in certain ways.32 To say that George has the right to sell his car is to say that others have a duty not to interfere in certain ways with his selling it. George might also have a privilege and a power to sell his car. But that is not what we directly refer to when we say he has a right to sell it.

Why? Because a claim against interference is the only thing that is common to all rights. Not all rights imply powers: I can have a moral right not to be enslaved even if I lack any power to change or alienate this right in any relevant way.33 Similarly, not all rights imply privileges: Even if one has a moral right to vote for a Nazi, since others should not interfere in certain ways, one still might have a moral duty to those others not to vote for the Nazi if one’s vote increases the chances that the Nazi will harm those others. But all rights do imply claims that others not interfere in certain ways.

This might seem wrong in some cases. For example, we can say that Joe has a right to park in the last empty spot in a parking lot. It might seem that others have no duty not to interfere, for Ken also has a privilege to park in the same spot, and Ken’s parking will interfere with Joe’s parking. But this is too quick. Ken may interfere in some ways but not others. He may not call a truck to tow Joe’s car out of the spot or threaten to harm Joe if he does not move his car or lock the gate to the lot, if the lot is public. Thus, Joe does have a claim that Ken not interfere in certain ways. If Joe did not have this claim, Joe would not have any right to park there. If the parking lot is private, and Ken owns it, then Ken may lock the gate or call a tow truck, and then Joe does not have any right to park in the last spot. Rights can vary in the kinds of interference that are excluded, as well as in the range of people who have duties not to interfere. And rights can still cluster together with other claims, privileges, and powers. But the minimum required for there to be any right at all is that there be some claim against interference. So this is what makes rights rights.

Even though privileges, powers, and some claims are not rights, it is still interesting to ask, Which of these can conflict, and how? For the sake of simplicity, I will discuss only claims and privileges but not powers. Powers are defined by abilities rather than duties, and the discussion will be complex enough without them.34
First, claims. The simplest way to define conflicts between claims is parallel to my definition of weak moral dilemmas:

A moral claims dilemma is any situation in which an agent cannot avoid infringing some moral claim.

For example, Zack is in a moral claims dilemma if Xavier has a claim against Zack that Zack not kill Xavier, and Yancy has a similar claim, but Zack cannot avoid killing at least one of them (as in a trolley case). Since moral duties are a kind of moral requirement, moral claims dilemmas are weak moral dilemmas. Since not all rights or claims are overriding, moral claims dilemmas are possible for the same reasons as weak moral dilemmas. And there is no more reason to think that all moral claims dilemmas are resolvable than to think that all moral requirement conflicts are resolvable.

However, this definition seems too narrow. For example, hate speech is often said to create a conflict of rights, because people are supposed to have one claim against others not to interfere with their speech and another claim against others not to be deprived of equal opportunity, but hate speech can be so demeaning and obstructive as to prevent equal opportunity. Nonetheless, there might be no agent who cannot avoid infringing a claim, since the speaker can avoid infringing any claim just by not using hate speech. What makes this a conflict of rights is instead that the exercise of one right infringes another right.

Such cases still fit under my definition of moral claims dilemmas if some third party has a duty to protect the infringed right. If the speaker and the target of the hate speech are students, the school administration might have a duty to the target to prevent interference with an equal education. Then the administration cannot avoid infringing either student's claim to equal education (if it does not interfere with the hate speech) or another student's claim to free speech (if it does interfere with the hate speech). However, there is not always a third party with a duty to protect the infringed right. In an election, hate speech can reduce a candidate's opportunity to be elected, but there might be no third party who has a duty to prevent such interference, and thus no agent who cannot avoid infringing a moral claim. If so, such cases still do not fit under the above definition of moral claims dilemmas, but the definition could be expanded to include them, if so desired.

Whether or not they count as moral claims dilemmas, such situations are possible. Critics might deny that there is any moral right to use hate speech. However, I already argued that a moral right can be overridden and that a moral right to do something does not imply that it is morally right to do it. These qualifications make it more plausible to claim that the general right to free speech includes a right to hate speech, at least in political contexts, even if this right is overridden and morally wrong to exercise. There is then no reason to deny that some people can have moral rights whose exercise would infringe or even violate other people's moral rights.

What about privileges? Can they conflict? It makes no sense to say that a privilege is infringed, but we can say that a privilege is exercised when the agent does what she or he has no duty not to do. Then:

A moral privileges dilemma is any situation in which an agent cannot exercise all of his or her privileges.

For example, if Joe has a privilege to park his only car in either of two spots in a parking lot, but he cannot park it in both, then he is in a moral privilege conflict. We can also say that Joe and Ken are in an interpersonal moral privilege conflict if each has a privilege to park in the last spot. Since privileges are defined as negations, these kinds of conflicts are obviously possible. In fact, each of us is in a moral privileges dilemma at every waking moment.

It is more interesting to ask whether privileges can conflict with claims:

A moral claim/privilege dilemma is any situation where
1. X has a moral claim against Y that Y do A,
2. Y has a moral privilege as regards X that Y do B, and
3. Y cannot do both A and B.

This kind of situation is not possible. X's claim implies that Y has a duty to X to do A. If Y cannot do both A and B, then Y's doing B will prevent Y from doing A. So Y has a duty to X not to do B. But Y's privilege means that Y does not have a duty to X not to do B. Since their definition implies a contradiction, moral claim/privilege dilemmas cannot ever happen.

An example should make this clear. Suppose a landlord wants to inspect one of his apartments at 6 A.M. If the tenant has a moral claim against the landlord that the landlord not annoy her, and if inspecting the apartment at 6 A.M. will annoy her, then the landlord has a moral duty not to inspect the apartment at 6 A.M. But this means that the landlord cannot have a moral privilege as regards the tenant to inspect the apartment at 6 A.M. Thus, it is not possible that the tenant has a claim against the landlord while the landlord has a privilege as regards the tenant if the exercise of the privilege would infringe the claim. Of course, the landlord can still have other privileges, such as to inspect the apartment later. He can also have a privilege as regards other people, such as his wife, since he has no duty to his wife not to inspect the tenant's apartment at 6 A.M. All that is excluded is one person's claim against another person that the latter do what the latter has a privilege as regards the former not to do.

These possibilities can be diagrammed as follows:

<table>
<thead>
<tr>
<th>Can they conflict?</th>
<th>Y's privilege as regards X that Y not do A</th>
<th>Z's claim against Y that Y not do A</th>
</tr>
</thead>
<tbody>
<tr>
<td>X's claim against Y that Y do A</td>
<td>NO (claim/privilege dilemma)</td>
<td>YES (claims dilemma)</td>
</tr>
<tr>
<td>Y's privilege as regards X that Y do A</td>
<td>YES (privileges dilemma)</td>
<td>YES (none of the above)</td>
</tr>
</tbody>
</table>
What about clusters? There are too many possibilities to discuss them all here. But one general principle seems plausible: Whether and how clusters of claims, privileges, and powers can conflict depends only on whether their component claims, privileges, and powers can conflict. For example, if a landlord is at liberty to inspect one of his apartments at 6 A.M., this liberty consists of a privilege of inspecting it at 6 A.M. plus a claim against others not to interfere in certain ways with his inspecting it at 6 A.M. If the others include the tenant, and if the certain ways include new locks, then the tenant cannot have a privilege of putting a new deadbolt on the only door without giving the landlord a key. Liberties and privileges can conflict in other ways, but not if the liberty includes the very claim that the privilege denies. Similarly, liberties also cannot conflict with claims if the liberty includes a privilege that denies the claim, as in the claim/privilege dilemma above. In general, any combination is ruled out as impossible if and only if the conflicting elements include or imply a contradiction, such as the assertion and denial of the very same duty.

Of course, there are many more possibilities. It would be a massive (even infinite) task to explore all of the ways in which claims, privileges, powers, and clusters can conflict. This exploration would be fascinating, but I will not attempt it here. All I can hope to have done is lay some of the groundwork for understanding some kinds of conflicts of rights.

What all of this shows is that there are many different kinds of moral dilemmas with very different logical structures. Although some kinds of moral dilemmas are possible, other kinds are not possible. In order to determine whether a particular kind of moral dilemma is possible, one cannot appeal to any claim as general as that moral dilemmas are possible. There is no substitute for a careful analysis of the particular kind of moral judgment and the particular kind of situation at issue.

Notes

I am grateful to Gene Mason and Ann Bumpus for very helpful comments on earlier versions, and to audiences at Tufts, the University of Massachusetts at Amherst, and the University of Maryland at College Park for stimulating discussion.

1. This distinction clears up some supposed counterexamples to my definition of (moderate) moral dilemmas. Earl Conee writes, "Suppose that you owe a favor to each of two friends. Today you can get just one ticket to the concert that each of the two would like to attend. You foresee that tomorrow you will be able to do something equally nice for either friend. You have no other pressing moral responsibilities that conflict with these opportunities today and tomorrow to repay your debts of gratitude to these two friends, and you have no special commitment to repay either friend today. It would be wrong not to give each of these friends the ticket today, unless you have a good excuse. So you are subject to what Sinnott-Armstrong calls 'moral requirements' to give each friend the ticket." Conee (1989), p. 134. I disagree. It would not be morally wrong not to give the ticket to either friend, since it is your ticket, and you can and may repay your debts to your friends in other ways in the future. What you "owe" is some favor but not any specific favor, so you can choose which favor to do. And if you choose not to give the ticket to either friend, it would not be appropriate to punish or condemn you, as long as you repay your debt in another way. Thus, there is no moral requirement to give the ticket to either friend, so this case is not a (moderate) moral dilemma on my definitions. A similar case is given by Philip Quinn (1991), p. 695, but in Quinn's case the ticket is to a dinner, and the potential recipients are "deserving ... poor folk." If these folk are not too hungry, I think it still would not be morally wrong for me to refuse to give the ticket to either, for the same reasons as above. In contrast, if these poor folk are starving, it would be morally wrong for me to refuse to give the ticket to either. But then I see nothing counterintuitive about counting this situation as a (moderate) moral dilemma.

2. Even Alan Donagan, who is one of the strongest proponents of moral dilemmas, speaks of "grounds of obligation" and explains them by counterfactuals, for example, in Donagan (1984), in Gowans (1987), p. 287. See also Donagan (1977b), p. 72, where he describes his procedure as starting with kinds of acts that it is impermissible to do at will.

3. A moral requirement is overriding not when it overrides some moral requirement that conflicts with it but when it overrides every moral requirement that conflicts with it.

4. In his paper in this volume, Brink concludes that non-override requirements are not all-things-considered requirements when he writes, "an all-things-considered obligation ... must be overriding." However, his preceding sentence says, "An all-things-considered moral obligation is what one ought to do in light of all morally relevant factors." One must consider all morally relevant factors in order to determine whether a moral requirement is non-override. For this reason, it is not clear why non-override moral requirements need not count as all-things-considered moral requirements. But this issue is just terminological.


8. These moral requirements are also not equal, since, if two things are equal, adding to one will destroy the equality, but a slight increase in the danger will not make that requirement override. This makes the requirements incomparable. See Sinnott-Armstrong (1988), p. 67.

9. It might seem that the antecedent of (1.2) is not true in my example because the moral requirement not to turn right is weaker than the moral requirement not to do the conjunction of not turning right and not turning left, but the former is still non-override, because these two requirements do not conflict; and the same goes for the moral requirement not to turn left. For more counterexamples to agglomeration, see Sinnott-Armstrong (1988), pp. 129-34.

10. (2.3) corresponds to Brink's "weak obligation principle" in his paper in this volume. He calls it "especially uncontroversial" and argues, "If I'm obligated not to kill my neighbor, then surely it's not the case that I'm obligated to kill him." But this is "sure" only if "obligated" refers to overriding obligations. It fails in irresolvable conflicts if "obligated" refers to non-override obligations (or to all obligations).

(2.3) is sometimes supported by claiming (2.3.1) "NA → Permitted (A)" and (2.3.2) "Permitted (A) → ¬N¬A," or equivalents, such as Brink's "weak impermissibility" and "coercibility" principles in this volume. However, the argument applies to moderate moral dilemmas only if "NA" stands for "non-override moral requirement," and it is natural to read "Permitted (A)" as "there is no overriding moral requirement not to do A," but then (2.3.2) fails in symmetrical trolley cases. If one redefines "Permitted (A)" as "there is no non-override moral requirement not to do A," then (2.3.1) fails in symmetrical trolley cases. So the argument is not strengthened by interjecting the notion of permission.
12. Further implications for prescriptivism, moral realism, and tolerance are discussed in Sinnott-Armstrong (1988), chs. 6, 7, and 8, respectively. These implications are what justify my definition of moderate moral dilemmas, since technical definitions should be judged by their usefulness.
13. The notion of univocal advice is not as clear as some assume, but I will not question it here. See Sinnott-Armstrong (1988), pp. 182ff.
15. Similarly, Conbee says, “An act is absolutely morally obligatory only if it is done in every life that is as nearly ideal as the person is able to attain.” Conbee (1989), p. 137. This definition runs into several problems. First, it conflates obligations with ideals and thus makes it absolutely morally obligatory to contribute to many charities. Second, this account assimilates (1) a trolley driver who avoids a crowded track by turning onto a less crowded track and thereby killing many people to (2) a different trolley driver who avoids a crowded track by turning onto an empty track and killing no one. Neither act violates an absolute moral obligation in Conbee’s sense, but they are still very different morally. Third, Conbee argues that his definition is important because by fulfilling absolute moral obligations “the person falls no farther short of perfection than is avoidable.” Conbee (1989), p. 137. This shows that Conbee, like Foot, is concerned with judgments of the person rather than of the act. Nonetheless, Conbee’s definition does make it obvious that absolute moral obligations in his sense cannot conflict. So my main response is just that his definition does nothing to show that other kinds of conflicts are not possible or not important.
17. I am grateful to Norman Dahl for suggesting this kind of definition.
18. Greeman (1988) and Roberts (1988) argue that emotions do not imply beliefs but only quasi-beliefs or construals. This issue does not affect my point here.
19. This argument is derived from Thomson (1990), p. 100 (note).
20. Following Thomson, I will say that an agent infringes a right when the agent does what someone has a right to do, or when doing it is adequately justified. An infringement of a right is then called a violation if and only if it is not adequately justified.
21. See the references to Dworkin, Nozick, Williams, and Feinberg in Decew (1988), pp. 64–65. The most detailed account of the strength of rights is Thomson (1990), ch. 6. These accounts and my discussion in this section apply to rights that are claims, as defined in the next section.
25. Hohfeld (1919). My discussion simplifies Thomson’s schema in (1990), which simplifies Hohfeld’s schema, but these simplifications do not affect the issues of conflicts or resolvability.
26. Thomson’s definition of claims in (1990), p. 41, allows claims of X against Y that P even if “P” does not refer to any action by Y or anyone. But nothing important here is lost by considering only claims that someone else does something. Also, notice that to have a claim is not the same as to make or assert a claim (verbally), although having a claim might be necessary in order to make a legitimate claim.
27. As before, Thomson’s definition of privileges in (1990), pp. 44–45, allows privileges of X as regards Y that P, where “P” does not refer to any act by X or by