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Two Dogmas of Moral Theory? Comments on Lisa Tessman's *Moral Failure*

Eva Feder Kittay

Abstract

In *Moral Failure*, Lisa Tessman argues against two principles of moral theory, that ought implies can and that normative theory must be action-guiding. Although Tessman provides a trenchant account of how we are thrust into the misfortune of moral failure, often by our very efforts to act morally, and although she shows, through a discussion well-informed by the latest theorizing in ethics, neuroethics, and psychology, how much more moral theory can do than provide action-guiding principles, I argue that the two theses of moral theory that she disputes remain indispensable for ethical theory.

Keywords: moral failure, moral luck, the vulnerability model, Bernard Williams, Robert Goodin, *ought implies can*, action-guiding moral theory

Lisa Tessman's *Moral Failure* is an excellent piece of scholarship and the best sort of philosophical thinking. Tessman's approach is feminist and constructionist. Using the latest scholarship in ethics, moral psychology, and empirical findings, she argues against two principles of moral theory, that *ought implies can* and that normative theory must be *action-guiding* (Tessman 2015). These principles are so fully accepted, and so fundamental, that they could be thought of as the two dogmas of moral theory. Normative theory, she insists, must be about more than a prescription for action. We need to know how to evaluate moral decisions, to decide what values are worth affirming whether or not they yield prescriptions for actions, and to understand our moral responses. I point out Tessman's rejections of *ought implies can* (4) and normative theory as *action-guiding* (6) not only because I understand these to be central features of her thesis, but also because they figure heavily in her engagement with my own work to which I will want to respond.

Tessman uses the findings of neuroethicists to help her establish the inevitability of moral conflicts that result in what she calls, borrowing from Bernard Williams, moral remainders (Tessman 2015, 31). Her utilization of the empirical research of Joshua Greene and Jonathan Haidt is not intended to impugn either the moral importance of the intuitive response nor the reasoned one, as some

philosophers have done. Instead she wants to give both systems of moral response their due, insisting that even when the two yield incompatible results, there is reason to say that both issue in *oughts* that have equally good grounding, and there is often no easy or possible blending of the two that preserves the moral importance of the called-for response.

Tessman argues the significance of intuitive responses whose moral authority derives from a particular type of intuition “that is experienced as a potent feeling that certain values are sacred and that one must protect them; part of what they must be protected from is the threat of being sacrificed if they are found to lack justification” (4). Intuitive responses therefore can have a moral authority that would suffer by the injection of reasoning. There are relationships as well as values that issue in an “I must” and present themselves with a “volitional necessity,” the force of which, once again, is compromised when a reasoned justification is introduced (81). The notion of “volitional necessity” is borrowed from Harry Frankfurt, but Tessman makes a convincing case that Frankfurt should have recognized that the “commands of love” can also issue in moral commands (53). The moral significance of such direct, immediate, and unreasoned responses was perhaps best captured when Bernard Williams, famously using the example of the man who reasoned that it was morally permissible for him to save his own wife rather than another person, remarked that the man had “one thought too many” (1981, 18).

Although reasoned responses can be important correctives against ingrained prejudices, reasoned responses alone can fail us for a variety of reasons: they may not be sufficiently motivating if they lack emotional urgency; they may conflict with deeply held values and so fail to receive emotional validation when unchecked by the process of reflective equilibrium; or they may be based on false beliefs, and knowledge of the error may not be possible for us to access. Most importantly, the two systems can result in incompatible, but valid solutions: whether one goes the intuitive road or the reasoned one, one may act in such a way that harm results—even irreparable harm that no one should have to bear, a moral remainder.

Tessman acknowledges her affinity to Williams, who also argues moral conflict comes about when we have two *oughts*, and that the conflict is not resolved even when we chose the better of the two (when there is a better). Williams writes that unlike the case of conflicting beliefs, in the case of conflicting moral obligations, “I do not think in terms of banishing error. I think, if constructively at all, in terms of acting for the best, and this is a frame of mind that acknowledges the presence of both the two *ought's* [*sic*]” (1973, 172).

While Tessman and Williams share the desire to acknowledge that two *oughts* cannot be theoretically reduced to one, as both deontology and consequentialism insist on doing, Williams is not on board with abandoning what I

dubbed the two dogmas of moral theory. Tessman wants us to reject *ought implies can* because, she argues, bad moral luck can put us in an impossible situation where we cannot do what we ought to do. The prime example is the case of conflicting obligations where we cannot do both *a* and *b*, and so we have an *ought* that does *not* imply *can*. Although Williams is the modern philosopher most responsible for taking up the Aristotelian notion of moral luck, Williams does not question whether *ought implies can*. Williams, in trying to sort out the logic of two conflicting *oughts*, rejects instead “the agglomeration principle”: If one ought to do *a*, and one ought to do *b*, by the agglomeration principle we ought to do *a* and *b* (1973, 183). But in the case of conflicting *oughts* we cannot do *a* and *b*. Rather than throw out *ought implies can*, William concludes that the agglomeration principle fails and should be rejected. I am not sure why Tessman does not take the same route.

I do however believe that Tessman is correct when she points out that bad moral luck can place us into situations where we are confronted with morally impossible situations, situations where moral failure of some sort is inevitable. Tessman, in discussing my own work, implies that I do not take moral luck into account. She writes:

Kittay avoids the possibility of inevitable moral failure by denying the legitimacy of moral requirements that come about through coercion (that is, through a form of bad moral luck); they are canceled before they even have an opportunity to come into conflict with any other moral requirement. In this way, both Goodin and (especially) Kittay create a much “cleaner”—more innocent—moral agent than the moral agent whose experience of moral failure I am trying to capture. (2015, 245)

But I believe she misunderstands me. I do deny the legitimacy of moral requirements that I have to care for someone when I am placed in that position through deeply unjust situations insofar as the person in that position is part of the unjust structure. But I do recognize that there can be a human being to human being relationship even in the condition of slavery, and that I can be called to respond to the person under my care *qua* another human being, rather than *qua* the oppressor who coerces my care. In such a situation, I may also have other obligations, not the least of which is an obligation to myself. Looked at this way, some situations of coerced care can issue in conflicting obligations in which there is a moral remainder no matter what I do.

Moral luck also plays an inevitably important role in an ethics of care. It is not something that I discuss because the full import of it was not that apparent to me when I wrote *Love’s Labor* (Kittay 1999). But moral luck plays a significant role in any theory that does not appeal to intention alone, where good intentions are

insufficient to determine that an action is good or even right. If I am charged to care for someone who refuses my care, I cannot fulfill my responsibility to care—and the failure is due not to my irresponsibility, but to the sheer moral bad luck of having the responsibility to care for someone who makes it impossible for me to fulfill my moral obligation. I take this to be the point in Williams's discussion of moral luck: that how our intentions play out, and are subsequently understood, often depends not on us but on the outcomes of our actions—outcomes which we are only partially able to control (1981). The question at stake is whether situations of bad moral luck demonstrate that *ought* does not imply *can*. And here I do part company with Tessman. But more of this later.

But first I want to speak to what Tessman appears to view as the second dogma of moral theory which ought to be questioned: that normative theory must be action-guiding. The reason I want to interject a discussion about the second dogma is because the two dogmas are relevant to one another. If normative theory must be action-guiding, then to deny that *ought implies can* would gut out the core of moral theory. Only if normative theory can be something besides action-guiding could there be a possibility that we could issue *oughts* that we knew were impossible to carry out.

Williams, unlike Tessman, thinks that recognition of two *oughts* brings us face to face with the centrality of the action-guiding role of moral theory. Showing that there isn't a logical inconsistency in holding that we have two conflicting *oughts*, Williams directs us to the practical question of what to do in the face of two *oughts*. Moral theory needs to do more than define the *oughts*, it needs to help us choose among these so that we can act. But moral theory may need the help of other practical questions. He concludes his essay on "Ethical Consistency" this way:

In fact, of course, it is not even true that the deliberative question is 'what ought I to do?' It may well be, for instance, 'what am I to do?'; and that question, and the answers to it – such as 'do a' or 'if I were you, I should . . .' – do not even make it look as though decision or advice to act on one of the ought's in a moral conflict necessarily involves deciding that the other one had no application. (1973, 186)

With these remarks Williams indicates both that there are moral remainders, but that the point of deliberation is still *action-guidance*.

For Tessman, however, the point of the moral dilemma, the two *oughts*, is not to choose even in the face of conflict—although she of course acknowledges that we must act. The point is rather to appreciate that, because of the conflict, we are always subject to moral failure. Theories that make moral failure a matter of

simply not doing the one thing you should do let us down because we lose the important fact that we can fail morally even if we do what we ought to do.

I do not disagree that it is important to recognize that there are situations where no matter what we do we may still do harm, even when the action we have chosen to do is the least harmful, or violates a value that is a lesser one than the one we chose to guide us. But, like Williams, I think the importance of noting the possibility, and perhaps even the inevitability, of moral failure under conditions of bad luck, is tied to the idea that the central role in normative theory is action-guiding.

It is true that I want to do more than ask “What am I to do here and now?” But the *more* is the question of where the moral failure lies and how it comes about. Does it lie with the moral agent or with a background injustice? What can and should be done to reduce the possibility for moral failure by identifying what is leading to such failures, to reduce, if not fully eliminate, the moral remainders? As much as I appreciate what Tessman is doing in this book, and the incredible sensitivity and insight in her analysis, I do not really understand the ultimate point of it if it isn’t, in the end, supposed to guide us in our present and future decision-making.

Tessman’s rejection of these two central principles of moral theory and her emphasis on the inevitability of moral conflict and moral failure lead her to reject deontological and consequentialist theories, since these theories cancel out one *ought* when one acts as one should; alternatively, these theories create a hierarchy of goods such that there is no conflict between different *oughts*. Neither has a place for moral failure. One theory that Tessman believes can accommodate moral failure is the “vulnerability-responsive” theory that she attributes to me (Tessman 2015, 209n8) and Robert Goodin (Tessman 2015, 237). She recounts the versions of this theory both in the work of Robert Goodin (1985) and in my work (1999) which is built on Goodin’s.

In its barest form, the theory asserts that the (or a major) reason we have moral obligations and responsibilities toward each other is that we are so positioned toward another that the other is vulnerable to our actions. Goodin introduces this principle for special relationships, that is, for relationships we have toward particular others that we do not necessarily have toward just any others. These relationships, I add, are agent-relative and patient-relative, that is, they are obligations or responsibilities particular to a given moral agent, not just any moral agent, and are directed to a given patient, not just to anyone. In relationships such as parent-child, the parent has obligations to and responsibilities for the child that a stranger doesn’t have—such responsibilities are not always voluntarily assumed. Even if we have chosen to become a parent, we may not have considered that the child might have

special needs, but if the child does have special needs we are nonetheless responsible for the child's well-being.

Goodin's point is that in these sorts of relationships, one party is particularly, sometimes uniquely, situated to meet the needs of the other party and so that other party is vulnerable to the actions of the first party. Vulnerability, argues Goodin, is at the source of agent- and patient-relative obligations even when these do not assume some prior relationship between parties. When I make a promise to you, for instance, you become vulnerable to my actions. You will make your plans in anticipation that I will fulfill my promise. Goodin takes the vulnerability model to apply wherever one person gets to be so situated that another becomes vulnerable to his actions. Consider the following example:

On a day in August 2015, Spencer Stone, Anthony Sadler, and Alek Skarlatos were on a high-speed train in Belgium headed toward Paris. When a terrorist started to attack the train passengers, the three young men who had served together in the military spontaneously mobilized and used their recent training to restrain the attacker and save the day. Because they were uniquely situated to respond to the threat, on the vulnerability model, they became obligated to act on behalf of those who would die had they failed to act.

Goodin extends the vulnerability model to institutions as well. Even if the person in need does not recognize that someone is uniquely or especially well-situated, so that they are vulnerable to that person's actions, the person who is well-situated should see that unless he acts, another will suffer and he will have failed morally. Goodin also maintains that how you came to be situated such that another is vulnerable to your actions, especially when they are uniquely vulnerable, is irrelevant to your moral responsibility, assuming you know that the other is so vulnerable. You may never have chosen to be in that position—say you never wanted to have a child, but motherhood was thrust upon you. You still are responsible for the child, and the child is dependent on you for her welfare, even if your choice is to give the child up for adoption. You may be in the position you are in through some form of injustice; say you became pregnant as a result of a rape. (Tessman gives several examples of unchosen situations in her text, some of which come from Primo Levi.) Goodin insists that however the current situation came about, the other's vulnerability and dependency on you is what defines the moral *ought*.

I argue, with Goodin, that voluntarism is inadequate, and the fact that a dependency responsibility is thrust upon you does not relieve you of moral responsibility for the dependent's needs. However, if it is thrust upon you through coercion, it is less clear that you have such a moral responsibility. In the case of a child born of pregnancy by rape, I do have some ambivalence. Someone surely has a responsibility for the child. However, I have no ambivalence in saying that I do not

think that a woman has a responsibility to bring this life into the world. Abortion in the case of rape I believe to be the woman's unequivocal right. If, because of coercion, the woman is made to give birth, I do believe the born child has the right to life, and we are morally obligated to assure that the child's needs are met. But I am less willing to say that the biological mother has the moral obligation to rear the child.

In *Love's Labor*, I cite an example in novelist Margaret Walker's *Jubilee*. Jim was a house slave in the Dutton home who accompanied the plantation heir to the front lines. He contemplates what he is to do with his mortally wounded young master:

Marster Johnny dying and he can't get home by hisself. I'll carry him home to his Maw where he can die in peace, but I sho ain't staying there. If Jim had been a field hand, such a delicate conflict would not have disturbed him. He would have felt no ties to the Dutton household, but he had nursed the old man and he had watched the children grow. Contemptuous as he was of Big Missy he was nevertheless tied to a strange code of honor, duty, and noblesse oblige which he could not have explained. So he was taking Johnny home. (Walker 1966, 184)

One finds many such encounters talked about in literature about slavery. On Goodin's and Tessman's views the slave whose master is ill or injured has a moral obligation to tend to the master whenever the master is dependent on the slave for care. The injustice of slavery is irrelevant as the needs of the master don't go away because the person he is dependent upon is his slave, and so the slave has a moral obligation to care for him. If the slave sees this as a time to escape, the master will suffer harm, perhaps irreparable harm.

The idea that the slave has a moral obligation to care for his master seems bizarre to me, and either the vulnerability model must be wrong or there must be some way to argue that the slave has no such obligation and to argue that the slave has moral permission to escape. The relation of master and slave has itself made the master vulnerable to the actions of the slave, all the while reserving for the master a system of coercion by which to punish a slave who failed to do the master's bidding. The system that put the slave into the position where the master is vulnerable to his actions is first of all a system of the gravest injustice, and any vulnerability born of such injustice cancels the obligations. At the same time, the master has also made himself invulnerable by erecting a scaffolding that disallows the slave from harming him on pain of death. It is hardly clear to me that the vulnerability model is appropriate here. I see no moral warrant that obliges the slave to the master.

Goodin's solution is to say that we are not just vulnerable to the actions of others, but we are also vulnerable to actions to ourselves. Because we are uniquely

vulnerable to our own actions, it may be the case that this vulnerability trumps the vulnerability of the master. We may be free to act to attend to our own need, but the obligation to the master would, especially if we admit two conflicting *oughts*, still remain valid. If I am a slave I may act so as to be self-respecting, that is, respecting my need for freedom, but there is a moral remainder and moral failure on my part. At least this is what Tessman, I conjecture, would want to say.

I do not buy this answer. The vulnerability of a dependent, say, a highly dependent person such as a young child, will often tax the one who cares for that child; yet as long as we are able to do so, we have the obligation to that child—that obligation exceeds the obligation we have to ourselves. Why should the obligation to oneself trump the obligation of a slave to, say, a very ill master — someone as dependent on the caregiver as a young child is? It is only because of the nature of the relationship, which is through and through unjust and coercive. As I mentioned before, however, in the process of caregiving, even coerced caregiving, an additional relationship does often develop—an affective relationship between the two people that is in excess of the slave-master relationship. It is to that relationship that Jim was responding when he chose to take his young master back to his mother to die. It is a relationship that would not have formed between a field hand and the master.

Tessman asserts that I am wrong to deny an obligation or responsibility on the part of the slave, and to say that the coercion that places the person in the position where the other is vulnerable to his action is a system of gross injustice that cancels the responsibility that the vulnerability model otherwise posits. Because, she says, the need still persists, and so I gather she wants to say that a moral harm remains. She would, like Goodin, cast the problem as one between two conflicting *oughts*: the obligation the slave has to himself, and the obligation the slave has to his master. For Tessman, the advantage of the vulnerability model is that one cannot cancel one *ought* in favor of the second. The master's need remains as a need, and whosoever is on the scene, on Tessman's view, still is faced with two conflicting *oughts* —the *ought* one owes oneself and the *ought* owed to the vulnerable person, and only the vulnerability-responsive model gives us that conflict.

She suggests that I fail to see this because I hold on to *ought implies can* (Tessman 2015, 243n28). Because the slave cannot gain his freedom *and* respond to a vulnerable master, I must think that he ought not to respond to the vulnerable master. But that is not what I think. I think the relationship of slave to master has no moral warrant, full stop. It is sheer might, without any right, that stands behind it. There does remain a vulnerable man, a need to be met, agreed. But in making a *slave* the one on whom he is dependent, he has lost any moral claim to having this individual, in this relationship that has no moral warrant, care for him. My point is that when the positioning of that someone is the consequence of coercion and injustice, the position is effectively vacated. The point of the vulnerability-

responsiveness model is not simply to point to a need that needs satisfaction; the point of the model is to assign an obligation to a someone, a someone so positioned to meet the need. It is agent-relative when there is a someone in that position. But slavery hijacks a person's agency—as does any truly coercive structure. That agency no longer belongs to the slave. That is, there is no longer an agent who occupies that position. To say that the master's need remains, is simply to say that there is a need to be met—not an agent-relative obligation. Someone should perhaps still meet that need, but that someone ceases to be the slave.

One could say that even if we think that, as his master's slave, he has no obligation to meet the master's need, as one human being to another he still has the obligation—especially if there is no one else who can tend to the master. The relationship of one human being to another is one to which even a field hand may respond. Perhaps that does leave us with some moral remainder, and a moral failure. In the case of slavery, I am not sure even such a bare relationship exists. For there to be a human being-to-human being relationship, each must see the other as a human being, but the slave is not situated as any stranger might be. As a slave, there is no recognition of his humanity—he is mere property. The master who would reliably promise to release the slave at that very moment would be able to make the claim on the man who was formerly his slave—but under slavery, one is hard pressed to be able to rely on any such promise.

Nonetheless, Tessman is right to say that if one refuses to respond to a pressing need, there is a moral failure. But it is a moral failure of a system that has allowed slavery, not of the slave. The same thing is true of Primo Levi's terrible situation, which Tessman recounts: Auschwitz has been abandoned by the Nazis, but the remaining prisoners are either nearly starved to death or dying of dysentery. Primo Levi hears the cries in the ward full of prisoners who are dying of dysentery. He recognizes the sound of a fellow prisoner from his town and tries, as feeble as he is, to help him. When he does, he is besieged by the others who want his help, and there is no way he can help them all. Tessman takes it that, insofar as all these ailing men are vulnerable to his actions, Levi now has a responsibility toward them and recounts how terribly he suffered knowing it was impossible to do so. He surely was so positioned because of terrible injustice, but he was nonetheless responsible for something that it was impossible for him to do.

One could say that Levi's situation is somewhat different than the slave's. The camp has now been abandoned by the Nazis—they can no longer deprive him of all remnants of agency. This is indeed what Levi experiences; he is free to act, but he is incapable of meeting all the need before him. But even if Levi feels this as his responsibility, I do not believe that Levi was responsible, and he was not responsible because there was no way he could fulfill that responsibility. We need *ought implies can* for precisely such cases.

Now we know that Levi did feel responsible for this and other situations in which he was unable to act as he would have otherwise have acted. What are we to make of such an experience of responsibility? As a child of two holocaust survivors, I *felt* responsible for the suffering of my parents. It took a psychotherapist in my college years to shake me out of what was delusion—that I had a responsibility to act when there was no way I could have acted to save them. The therapist brought me to my senses by posing a simple question I had never posed to myself: How could I save my parents when I was not even born? Of course! That didn't mean that I couldn't continue to be terribly pained by what they had undergone—but to feel guilt or responsibility for something that was impossible is simply *crazy*—quite literally so. Levi could no more help his fellow prisoners than I, as an unborn, as yet unconceived, child could help my parents. That he was wracked with pain at their suffering and his helplessness is surely appropriate. But to take this as his moral failing is no less crazy than my guilt was. *Ought implies can* brings desperately needed sanity.

I said above that nonetheless I do think there is a certain way that *ought* does not always imply *can*. I argue elsewhere that care, in the fully normative sense, is a success term. That is, unless we actually succeed in helping another flourish, we have failed to care in this fully normative sense, even when we tried to care. We can fail for all sorts of reasons that are beyond our power to control. Even though it may objectively be the case that we will fail to care, we still may have an obligation to care. But I actually think that the obligation here is *to try*, as best we can, to give care. Whether we will succeed may be a matter of moral luck. This means that caring is often morally fraught. We do not always know if success is possible, and yet we have to try to do it. But if we fail to care, it may not be a moral failing, at least, in the sense that we are blameworthy. In Primo Levi's case, I don't even think he was obliged to try to care, not because he couldn't succeed, but because even attempting to do so was beyond the realm of the possible.

I think that our job as philosophers is to locate the blame for moral failure where it belongs, and it is more likely to belong to those who are in powerful rather than powerless positions. This is not simply to leave us off the hook, morally speaking. Tessman is right to say that we need to recognize the moral remainders we leave in our wake. And her work here is an enormous contribution. But we need to recognize those moral remainders for a reason, and that reason, I think, is to guide our future actions, to arrange society as justly as possible, and so to avoid, as much as possible, putting people into morally untenable positions. I love to discover dogmas wherever they are, but the two principles, that *ought implies can*, and that *action-guidance* is the principle role of moral theory, are not dogmas. We need to recognize the work of moral luck and moral failures precisely because *action-guiding*

is at the core of moral theory: What are we to do, given all the things we ought to do.

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