

# MEDITATIONS

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DEPARTMENT OF PHILOSOPHY  
UNIVERSITY OF CALIFORNIA, LOS ANGELES



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THE UNDERGRADUATE JOURNAL OF PHILOSOPHY AT  
UCLA

ISSUE 10, SPRING 2023

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# Editor's Letter

Dear Reader,

After another year it is again the time to continue the perennial meditation on the questions of philosophy. Not everyone has the privilege of this meditation, but for those who do, it is their responsibility to explore the depths of these questions and to see their relation to the world around us. In different ways, this is the accomplishment of each essay in this journal. Whether it is in the realm of tragedy, faith, or privacy, each author has joined the philosophical conversation, both by elucidating the works of the great philosophers of the past, but also by applying their work to a modern context and criticizing their views constructively.

To the editors: Logan, Emma, Esther, and Taylor, I would like to give my thanks and appreciation for their insightful feedback to the authors as well as for the many hours they dedicated to the journal. I would also like to thank Brandon Ward, the previous Editor-in-Chief of the *Meditations* Journal, for his help in navigating the difficulties of running a philosophical journal. Lastly, I want to express my gratitude for the support of the UCLA Philosophy Department both for the journal and for philosophy as a whole.

Cheers,

BRENDAN BACON

*Editor-in-Chief*





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# THE TENSION IN TRAGEDY

KEVIN YAO

*University of Chicago*

**Abstract.** In facing a dilemma, we encounter choices that exclude each other but are also each justified, such that a difficulty arises in resolving them. I aim to examine how dilemmas come to be tragic, with Sophocles' tragic play *Antigone* as my primary focus. It will be shown that the understanding of tragedy by Hegel, presented as a collision between contradictory forces, is one that ultimately fails to capture the difficulty of choice in a tragedy. Instead, I will argue that the mutual assertion and exclusion of the dilemma produces a tension within contradictions. Such tension serves to define the nature of these contradictions, meaning that only an understanding of tragedy that preserves the tension of the contradiction will be able to capture its nature. I conclude by suggesting that the tension found in tragedy differs from tension in other forms of contradictions by the additional quality of known choice, where tragedy arises from the knowledge that the choice to be made both is and is not one's own.

## 1 Introduction

Consider the choices faced by the character Antigone in Sophocles' tragic play of the same name. The command of the new King Creon forbids the performance of funeral rites for Antigone's brother, and yet as the remaining member of her family, she is also obligated to perform them.<sup>1</sup> She is faced with two mutually exclusive choices—a dilemma—and arrives at an impasse, the inability to make a choice. Let us not, however, concern ourselves with how to respond in the face of such an impasse to resolve this dilemma. Instead, let us ask

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<sup>1</sup>Sophocles, *Antigone*.

this: why does Antigone, in the face of this dilemma, arrive at an impasse? We can say this is the result of the mutually exclusive choices, but I believe this is insufficient. Certainly, Antigone is faced with these contradictory choices, but why then does this state of affairs lead to an impasse? Why does the choice become tragic?

I aim to suggest that within the contradiction of the choices of the dilemma is a tension. It is this tension that makes tragedy tragic, such that tragedy is preserved only insofar as this tension is preserved. Hegel's method of examining tragedy as conflict will thus be of particular interest, wherein tragedy occurs upon the collision of contradictory ideals. I hope to expose the assumption held by Hegel but which needs to be abandoned to resolve his understanding's shortcomings: his claim that in the examination of the contradiction there will necessarily be a collision. It is the assumption that the impasse in the face of the dilemma, in some way or another, cannot hold indefinitely in our examination, necessitating a turn to a reconciliation of the contradiction. Yet in necessitating a collision in his examination, Hegel's method loses sight of the tension that preserves tragedy, rendering it a mere moment that is left unexamined. Since tension is what upholds tragedy, the examination of tragedy should treat it as a worthwhile object of examination, not discounting potential reconciliation, but giving focus to tension, rather than engaging with it merely insofar that it is to be resolved. That Hegel's method is unable to do so thereby reveals a need for an adequate account of tension, and specifically tragic tension itself.

The account I aim to give should neither be taken as a definition of tragedy, nor a work of ontology prescribing the necessary conditions by which something can be a tragedy. The ideas and concepts that are evoked by tragedy are varied. Any characterization runs the risk of claiming too much by including cases that are not at all tragic, while at the same time claiming too little, leaving obvious cases of tragedy outside of itself. Rather, tragedy insofar as it is used in this work, corresponds to a phenomenon, with dramatic tragedy as a canonical reference (which is only to exclude the even broader idea of tragedy as pertaining to sadness and undesired events). Thus, while *Antigone* shall be the primary object of our

examination, the tragic elements uncovered should also apply to *Hamlet* and other dramatic tragedies, all the while not claiming to definitively characterize any of them. But tragedy need not be definitely characterized; insofar as we point out or make use of its characteristics, we use them only to say that our means of understanding must in turn be made able to accommodate them. Thus—as we will see—when it is found that tragedy depends upon the maintenance of tension, it is only to demonstrate that our means of understanding must in turn accept tension as a genuine phenomenon, demanding investigation, rather than as a mere moment of contradiction.

As such, the usage of tragedy here and throughout the rest of the work will not necessarily correlate with all of the common uses of the word. We are not concerned with tragedy in the sense of a regrettable event, but instead with dramatic tragedy. Furthermore, the aim is not so much to reach an adequate definition of tragedy, nor to portray the Hegelian account as somehow false. Instead, the critique of Hegel's account aims to point towards the phenomenon of tension within tragedy. Hegel attempts to transcend this tension in his dialectic. I, however, believe that it should instead be preserved.

## 2 Dilemmas

Tragedy as we aim to examine it arises from the impasse of choice. But where there is an impasse, there must be the case of mutually asserted but contradictory choices—a dilemma—upon which one can face an impasse in the first place. Let us first examine the dilemma, and consider where the contradiction that will be so important to us lies.

Jean-Paul Sartre discusses the famous example of a moral dilemma, wherein a son is torn between the choices of joining the Free French Forces to fight for his country, or to stay back home to care for his mother.<sup>2</sup> As Sartre argues, regardless of the moral values the son

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<sup>2</sup>Sartre, *Existentialism Is a Humanism*, p. 30-1.

adheres to, good reasons remain for either choice.<sup>3</sup> This is to say—and is also an assumption we will accept for the sake of seeing the contradiction—that he cannot make his choice simply by eliminating one of the choices as incorrect. It is the case that he should join the Free French and also the case that he should stay behind to take care of his mother. But it is also evident that he is unable to do both, and that choosing one would mean deliberately rejecting the other. This is where the contradiction lies: two courses of action deny each other,<sup>4</sup> but both are affirmed.

Yet the impasse does not immediately follow from this. Indeed, in Sartre's case, he raises the suggestion of following one's own instincts, such that "it is feelings that matter."<sup>5</sup> We should thereby distinguish between the dilemma—contradictory choices that are all affirmed—and the impasse: the sense in which we are left unable to choose. That there is a contradiction does not immediately indicate an impasse, and it is this latter sense that is what we need to consider further. We will therefore define our terms by taking contradiction as the mutual assertion of something along with its negation; dilemma as a set of contradictory but mutually justified choices; and impasse as the inability to make a choice within a dilemma. With an understanding of dilemmas in place and rendered distinct from the impasse that might be present along with it, we now have the necessary terminology to consider Hegel's conception of tragedy with respect to the dilemma.

### 3 Hegel's Collision

Recognizing that the dilemma is at its center a contradiction, we see the conflict in Hegel's understanding of tragedy. With *Antigone* in mind, Hegel writes that "the divine forces in tragedy muster about the two poles of the ethical order," forming the two opposing forces of the dilemma.<sup>6</sup> For him, the two poles must be completely opposed to each other and are

<sup>3</sup>Sartre, *Existentialism Is a Humanism*.

<sup>4</sup>In the sense that they are exclusive to each other.

<sup>5</sup>Sartre, *Existentialism Is a Humanism*.

<sup>6</sup>Hegel, *Phenomenology of Spirit*, p. 584.

thus contradictory. In the case of *Antigone*, is it the “family pole” and the “governmental pole” that form an opposition to each other, and are in turn represented by the characters Antigone and Creon respectively.<sup>7</sup> Antigone argues that it is her duty to her family to bury her brother while Creon, as the King, argues for his authority to forbid the burial. This does not mean that the conflict for Hegel is between two interests. Rather, Hegel argues that neither Antigone nor Creon defends their respective forces out of what “can be rooted only in an individual’s private inclination.”<sup>8</sup> Each force is justified in its own right such that the mutual pursuing of both forces cannot be for Hegel a conflict of good and evil.<sup>9</sup> This is therefore precisely the contradiction that the dilemma presents: opposed forces that exclude each other, yet are both asserted.

However, for Hegel, this state of contradiction merely establishes the conflict between the forces. In a “collision of equally justified powers,” the forces must not merely oppose each other, but actively conflict.<sup>10</sup> In Hegel’s tragedy it is not sufficient for Antigone to simply hold the view that her brother must be buried and Creon the opposite. Instead, this contradiction must come to a head and be broken down, which for Hegel is presented by Antigone’s argument and subsequent execution. This is because Hegel thinks that each of the forces is “one-sided” and thus is unable to accommodate the other.<sup>11</sup> The collision—by which Hegel means the mutual negation of the two forces of each other—occurs when this mutual exclusion becomes untenable.

The contradictory aspects cannot both be affirmed indefinitely, however, and their mutual exclusion must for Hegel inevitably be reconciled in the examination of tragedy. Yet, this collision also strips away the one-sidedness of the forces—the sense in which each force stands in opposition to the other—such that “undisturbed harmony returns.”<sup>12</sup> This collision is thus a resolution to the conflict that led to it in the first place. The

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<sup>7</sup>Ibid.

<sup>8</sup>Hegel, *Aesthetics, Volume II*, p. 1212.

<sup>9</sup>Gragl, “Hegel’s *Antigone*,” p. 413.

<sup>10</sup>Hegel, *Aesthetics, Volume II*, p. 1213.

<sup>11</sup>Ibid.

<sup>12</sup>Ibid.

justifications for the forces are not invalidated in the collision, but instead their conflict is transcended and thus reconciled. Indeed, we can consider this collision in a dialectical fashion. An internal contradiction—such as within Greek society that is then expressed in the play—leads to the recognition of an irrationality, some assumed aspect of the society that is in fact contradictory.<sup>13</sup> The collision that sublates<sup>14</sup> this contradiction reconciles the conflict to establish a transcended harmony. This harmony is in turn the product of the tragedy.

The account of tragedy, then, for Hegel involves an inherently dynamic progression. To examine tragedy is to present a transition from the irrational and contradictory to reconciliation and harmony—the process through which tragedy resolves itself. But it is also for this reason that I believe this account of tragedy fails. A tragedy that has reached the point of collision and has been reconciled is no longer tragedy, for there is no longer a dilemma. But if that is the case, where there is no longer a dilemma there is also no longer an impasse, such that the difficulty that comes with tragedy is no longer present. In other words, the means by which Hegel examines tragedy leads one to a position where the very thing they are examining disappears. This may be useful for other reasons, but certainly not to give an account of tragedy itself, as something taken only as a mere moment to be transcended. An impasse that must inevitably and by its very nature come ahead is no impasse at all. To be sure, the process of collision may be extended, but for Hegel the inevitability of a collision remains.<sup>15</sup> The dilemma is rendered illusory each time, being only a preliminary step towards a transcended solution. If this indeed is the progression that occurs, it is nevertheless an inadequate account of tragedy, for it does not explain the difficulty that is the impasse. Indeed, it attempts to circumvent this issue completely by simply annihilating the contradiction. What remains after the collision is the solution to

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<sup>13</sup>Gragl, “Hegel’s Antigone,” p. 414.

<sup>14</sup>In reference to the German term “aufheben” which Hegel uses in his dialectic to mark the transition to the transcended result that both preserves the determination of the initial aspects but also cancels and negates their mutual contradictions.

<sup>15</sup>Hegel, *Aesthetics, Volume II*, p. 1215.



the contradiction, and while this moment of resolution may be desired, it does nothing to further the understanding of the tragedy it displaces.

Our criticism of Hegel on this point must not be taken as a rejection of the possibility for a reconciliation and it is worth clarifying what is meant here by the disappearance of tragedy, so as to dissuade any confusion. Under Hegel's methodology, one reaches a moment of reconciliation that dissolves the tragedy *in the examination*.<sup>16</sup> That is to say, our examination of our object—the play *Antigone* in this case—no longer has any grasp of the tragedy. Yet the object itself still is tragic and can be treated by us as a tragedy, even with a grasp of the resolution. One should not think of the contradiction of tragedy like a puzzle or problem; once solved it is no longer truly a puzzle but merely called one. The contradiction, on the other hand, is not solved except *in the examination*, and the two opposed forces are not reconciled as they are. Instead, a new refined concept, containing aspects of both forces yet internally reconciled, takes their place as the resolution. Yet, if we return to the original two forces, they are still very much contradictory, such that the dilemma they are found in is still tragic. This is to say that Hegel is not claiming a dissolution of what is tragic in a tragedy—*Antigone* remains tragic despite the resolution reached in the examination. However, insofar as we are within the examination, Hegel's method, by necessitating the transition to a reconciliation, renders its grasp of the tension that underlies tragedy to a mere moment. But to understand tragedy, we cannot move beyond the contradiction to reconciliation immediately, because where there is no contradiction, there is no impasse and thus no tragedy remaining to examine. Hegel's conception of tragedy, then, is one that by its very means of examination destroys its own object of consideration, for in its analysis of tragedy, it undermines the very contradiction that produces the impasse that in turn maintains tragedy.

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<sup>16</sup>That is, within Hegel's dialectic.

## 4 Preserving Tension

Seeing as Hegel's understanding of tragedy as a collision fails to explain the impasse, let us consider why there is an impasse at all. Let us return to our dilemma, and consider the contradiction: if the law of the family contradicts the law of the state and vice versa, then they simply negate each other. If we make a choice, the other options are dissolved and the contradiction disappears. Yet our dilemma is precisely difficult because all the choices, though exclusive, are valid—we should obey *both* the law of the family and the law of the state, in the case of *Antigone*. Our contradiction fails to capture the mutual assertion of our choices, only capturing how they exclude each other. By this I do not mean how both choices are asserted, since that is why there is a contradiction in the first place, but instead how the assertion of both in some sense binds them together. Antigone is not commanded to obey the law of the family *and* commanded to obey the law of the state, but commanded to obey both.<sup>17</sup>

For this need to capture both the binding and exclusion of the choices, I believe the impasse needs to be considered in terms of what I will call tension. This tension is both the aspect of the dilemma in which the choices deny each other, but also the sense in which they have been asserted together. The tension is thus itself internally contradictory,<sup>18</sup> but it is with the addition of this contradictory component that the impasse we have established is able to exhibit itself. In recognizing tension as opposed to a mere contradiction, the choice is no longer “one or the other” but instead “one or the other but

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<sup>17</sup>The distinction to be made here is between two commands that are contradictory with each other, and a single command that is internally contradictory. For the former, it is possible to separate the two conjuncted laws from each other, meaning that the sense of mutual assertion is not expressed. One may, for example, obey one of the laws, and would thus satisfy one of the commands. This satisfaction is wholly complete and is not at all contingent on the other conjunct. As such, while with regards to the sum total list of commands they may only be partially successful, they have nevertheless actually satisfied at least something. On the other hand, the command to obey both, supposing that it is contradictory, cannot even yield partial success. There is only a single command, and even when one succeeds in satisfying one of the two laws, they still fail to satisfy both and thus fail to satisfy the command completely.

<sup>18</sup>Indeed, one can notice a regression that occurs here. The tension itself is composed of two aspects that are mutually asserted but contradictory to each other. This internal tension, if we may call it that, however, is by no means vicious and does not detract from the initial tension itself.

it must be both!” For the former, the issue at hand is to make a bad choice, but this appeals to an idea already rejected by Hegel: “that [tragedy] have anything to do with guilt or innocence.”<sup>19</sup> This to say that a poor choice or even the wrong choice is not the concern of tragedy. Instead, as we see in the latter, it is because the choice is made difficult that the tension captures the sense of the impasse in which we are torn by the dilemma and put into a position where we are unable to make a choice at all.<sup>20</sup> In capturing the dual senses of mutual assertion and exclusion into a single tension, we have thus been able to relate the dilemma, from which tension arises, to the impasse that tension leads to.

With the idea of tension, it can also be seen that tragedy is preserved by the maintenance of tension. If tension is what preserves the impasse, and the impasse is that upon which tragedy arises, then to preserve tragedy the tension must be maintained. Should we dissolve the tension between the choices—consider if there suddenly was a way for Antigone to obey both Creon and pay respect to her brother—then the tragedy disappears.<sup>21</sup> Indeed, the dissolution of tension is what causes the Hegelian understanding to fail to give an adequate account of tragedy. In collision, the contradiction is annihilated, and thus there can no longer be any tension. Without tension there is no impasse, and therefore the collision is also the dissolution of tragedy. Yet even the framework of the collision prevents the maintenance of tension. In the collision, the opposed forces are pitted against each other, such that they must collide. Furthermore, their collision demonstrates their inability to be mutually asserted, except in some transcended form. Thus, just as much as this understanding cannot preserve the contradiction, the mutual assertion that

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<sup>19</sup>Hegel, *Aesthetics, Volume II*, p. 1214.

<sup>20</sup>It may still be possible for one of the choices to end up being accomplished, such as in the case where the contradictory choices are between action and inaction. An impasse might in turn lead to inaction. Yet this is merely a consequence of the impasse and is rather a failure of choice as opposed to actually choosing. Doing nothing because one cannot decide to act is not inaction by choice.

<sup>21</sup>Here we can in fact consider the narrative form of a call to action, whereby the protagonist is faced with an (at first) difficult choice to embark upon their narrative. The reason why this call to action does not at all resemble Sartre’s tragic case of the son thinking about going to war is that the tension is posed fictitiously and is quickly dissolved. Although both choices—accepting or rejecting the call to action—at first appear to form a dilemma, it is illusory. Once this illusion disappears, so does the tension and the protagonist is thus able to make a non-tragic choice.

forms the other aspect of tension is forgotten. Hegel's understanding leads to the simple contradiction considered earlier, wherein there is no tension and thus no true impasse. We therefore see that an adequate account of tragedy then, must concern itself with tension, and furthermore must do so in a way that ensures that the tension is preserved rather than dissolved.

## 5 Tragic Tension

So far we have considered tension, but this has been general and not yet specific to tragedy.<sup>22</sup> Of course, even an account specific to tragedy must still be general enough to account for the differences in tension of different tragedies. The forces within *Antigone* are not exactly the same as that of Sartre's example, and there is no need to render these two cases to be precisely the same. What we can call tragic tension, then, certainly must be a contradiction, but should also hold some additional quality that distinguishes tragedy from all other cases of contradiction. Here, I propose the matter of choice, namely free choice, as that additional quality.

To explain this, let us consider two contradictions. First, the proposition "the giraffe is tall" and its negation "the giraffe is not tall." If both are asserted, then there is a contradiction; with that contradiction is some tension between the two propositions. Again, by assertion we should here clarify that we mean mutual assertion—asserting that "the giraffe is tall *and* the giraffe is not tall" and not asserting each proposition separately. However, there is no choice to be made here and thus no impasse. We are certainly able to try to resolve the contradiction into something coherent, and in doing so we will indeed face an expected difficulty, but this difficulty is not the difficulty of making a choice between the two propositions. The contradiction itself does not put us at an impasse simply by being a contradiction. These propositions are fact-stating and there is no

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<sup>22</sup>We may, after all, face the logical form of contradictions that are mutually asserted without needing to necessarily consider tragedy. Such forms would also hold tension, but it would not be the case that we identify such tension as necessarily tragic.

demand for choice: one or the other is the case. On the other hand, consider the proposition “I should bury my brother” and its negation “I should not bury my brother.” To be sure, they are also claim-making propositions and there will be a similar tension in that contradiction when they are mutually asserted. However, in this case, a choice is demanded and therefore leads to an impasse. Only when the choice needs to be made does the inability to make a choice become a problem—an impasse.<sup>23</sup> Otherwise it is a mere contradiction, and whilst one is free to try to resolve it, there is no choice to be made and thus no choice to be difficult. There is thus this additional quality to tragic tension, one moves beyond the tension between the choices themselves to the tension in the making of that choice. It is the tension of the contradiction between being given a choice but also having no means by which that choice can be made, meaning that there is—despite being a choice—in fact no choice they are able to make at all.

But the mere inclusion of choice is not sufficient, because choice itself requires an epistemic component. Indeed, Antigone’s sister Ismene’s choice to obey the law of Creon is not taken as tragic until she is confronted by Antigone’s punishment.<sup>24</sup> This is to say that if no knowledge of the contradictory choices is to be had, then there is no choosing. One simply does one or the other without it ever occurring to them that they are making a choice.<sup>25</sup> Only under the state of knowledge—where the choices are presented to us as choices and as contradictory—is it the case that tragic tension from the inclusion of choice actually forms. Taking the epistemic component into account, tragic tension is the tension between the knowledge that there is a choice for them to make and the knowledge that such a choice is illusory. It is both complete ownership of the choice, as only they

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<sup>23</sup>It is important to note that the tension is by no means psychological. To be sure, there may be psychological effects of the impasse, but they are wholly irrelevant to the tension itself, which is purely logical. It is not the feeling that the choice is difficult to make but rather the logical fact that the choice *is* difficult to make.

<sup>24</sup>Sophocles, *Antigone*.

<sup>25</sup>It is, however, in dramatic theater for some character to be precisely in such a state yet still be described as tragic. This is because, whilst the character remains in ignorance and makes no real choice, to an audience with the knowledge of the contradiction there is very much a choice (albeit they are merely observers of that choice). Thus it is to the audience that the contradiction presents itself and it is to them that the tragic tension arises.

themselves can decide, yet as it is also impossible to make the choice, it is also utterly foreign to them. The contradiction can be summarized by the couplet: “I know this choice is mine; I know this choice is not mine.” The tension from this contradictory couplet is—in a general sense—what arises from each tragic dilemma.<sup>26</sup>

This couplet is also why the tragedy considered here is broader than merely what is found in *Antigone*. It is purely formal with respect to the contents of the choices themselves, having abstracted away from the choices to the act of making the choice. Thus, it does not matter that Shakespeare’s Hamlet presents a different choice between life and death in his soliloquy, or that Victor Hugo’s Javert’s conflict between law and morality is not the same as faced by Antigone;<sup>27</sup> all are found in the act of making a choice they cannot make, such that all face tragic tension.<sup>28</sup>

We can take this formulation of tragedy to be in contrast to the Hegelian conception, where tragedy does come to its own inevitable demise. Instead, so long as the tension is preserved, tragedy remains. It is therefore an understanding of tragedy where tragedy remains tragic, that the understanding does not come to dissolve what it tries to understand.<sup>29</sup> Again, it must be emphasized that this understanding of tragedy by no means aims to give a definitive account of what is meant by the term tragedy. Rather, it offers a key characteristic that one may glean from dramatic tragedy and provides a means by which that characteristic can be understood. For in so much as Antigone faces the dual choices of the state and family, so too does Javert in his dogmatic pursuit of justice under the law. The account of tragedy here may be in some respects insufficient and in others too

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<sup>26</sup>Either for the characters of the tragedy or for the audience who sees it unfold.

<sup>27</sup>Referring here to William Shakespeare’s *Hamlet* and Victor Hugo’s *Les Misérables*, respectively.

<sup>28</sup>Yet this formulation of tragic tension, being as abstract as it is, also accepts mundane cases. Examples of daily conundrums wherein we find ourselves unable to decide are common, yet we think of them as distinct from tragedy. However, I believe such a move is rushed, and whilst certainly there may be some cases where it is truly not tragic, that such mundane cases can lead us to be faced by this contradictory couplet of both ownership and non-ownership of choice is perhaps indication that, with closer examination, they do indeed have the capability of being tragic.

<sup>29</sup>Or perhaps, more poetically, it is truly tragic for in understanding the tragedy, that we do not resolve the tension and save ourselves from the impasse. Instead the tension is laid further bare, without yet a solution in sight.

narrow, but that there is such a tension that must be contended with, cannot be denied.

## 6 Conclusion

In the examination of tragedy, we have encountered the idea of tension and saw how tension arises from the contradiction of a dilemma. This tension, which is composed of both an aspect of exclusion and an aspect of mutual assertion, is what gives the contradiction its determinate nature. It is this tension that causes the impasse which lies at the center of tragedy. In recognizing this, it has been shown how the Hegelian understanding of tragedy—for which mutually excluding forces collide to achieve a transcendental harmony—dissolves tension rather than preserves it. It is thus an understanding of tragedy that always annihilates it. Instead, it is only by preserving the tension that tragedy is itself preserved, such that an understanding of the former is the understanding of the latter. With this goal, we thereby have produced a general understanding of tragic tension, which formed as a result of the contradiction between knowledge of choice and knowledge of the lack of choice. With this tragic tension arrived at, an understanding of tragedy can be grasped.

Yet through the discussion of the tension within tragedy, a broader relationship between tension and contradiction has been suggested and must be expanded upon in other works: the idea that tension is not exclusive to tragedy. Wherever contradictions arise, they are not mere incoherence but contradictions of this or that nature. In much the same sense that we needed to arrive at a more specific formulation of tragic tension from tension of contradictions generally, there are other specific cases of contradictions that arise which require their own treatment. In examining other phenomena, such as the logical contradictions in the absence of choice, it may be possible to characterize the tensions upon which contradictions rely, thus coming to a better understanding of them. With an appreciation of tension, the nature of each contradiction can be examined, such that their

contradictions are no longer so opaque in their incoherence. This is to say that a contradiction should not be treated as the end point of some examination—a point in the examination where one must go back or leap over to a resolution—for through the tension a further understanding can be arrived at. It is not merely tragedy that is contradictory, and I believe the exploration of such things will be possible only if they are preserved—their tension unbroken by collision.



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# THE ABSURD AND THE MUNDANE

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## 1 Introduction

Kierkegaard's *Fear and Trembling* presents a study of faith from the perspective of a pseudonym, Johannes de Silentio.<sup>1</sup> De Silentio is a man without faith who tries to understand faith using reason, but cannot.<sup>2</sup> His analysis of faith focuses on the biblical story of Abraham and Isaac, working under the assumption that Abraham is an exemplar of faith. He holds that faith requires absurdity.

In this paper, I will explain why de Silentio believes that faith is absurd, and then show that faith is not absurd. To do this, I will first use the story of Abraham and Isaac and the example of the mundane knight of faith to explain how faith is a double movement. I will then represent the apparent absurdity of faith as a contradiction of propositions. I will finally analyze these propositions to show that they do not contradict. In doing so, I will show how to have faith is to make meaning out of meaninglessness.

## 2 Faith

In this section, I will present the story of Abraham and Isaac. I will then present de Silentio's example of the faithful bourgeois philistine. I will use these two instances to

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<sup>1</sup>The purpose of writing under a pseudonym, for Kierkegaard, is to present a topic from the perspective of a person with a skewed or limited understanding of the topic. "Johannes de Silentio" is a Latin name, which translates to "Johannes of Silence." I will be referring to de Silentio rather than to Kierkegaard when referencing the text, because *Fear and Trembling* is from de Silentio's perspective.

<sup>2</sup>Kierkegaard, *Fear and Trembling*, p. 27.

explain how faith is a “double movement.”<sup>3</sup>

## 2.1 Abraham and Isaac

In the story of Abraham and Isaac, God promises Abraham a son, despite Abraham’s old age. After years of waiting, Abraham’s wife Sarah gives birth to a son, who is named Isaac. More time passes, and God commands Abraham to take Isaac, now an adolescent, to the top of Mount Moriah to be a sacrifice. Abraham obeys and takes Isaac up the mountain, having faith that God will provide a lamb to sacrifice. He arrives at the top, without seeing a lamb, and at the moment he takes up the knife to kill Isaac, he sees a ram, and he sacrifices the ram instead.<sup>4</sup>

Abraham is the primary example of a “knight of faith” in *Fear and Trembling*.<sup>5</sup> A knight of faith is an individual who lives faithfully, and who thus exemplifies the faithful life. This does not mean that the knight of faith lives a life that appears extraordinary to others. In fact, de Silentio claims that any person, no matter how ordinary they appear, could be an “authentic exemplar” of faith.<sup>6</sup>

## 2.2 The Mundane Knight of Faith

To show that the knight of faith may have an ordinary external appearance, de Silentio presents and details the everyday life of the mundane knight of faith. He uses the example of the “bourgeois philistin[e].”<sup>7</sup>

De Silentio characterizes this individual as a person who appears outwardly normal—“just like a tax collector.”<sup>8</sup> However, as a faithful person, the bourgeois philistine “enjoys and takes part in everything. . . [and] enjoys everything he sees.”<sup>9</sup> In other words, as a

<sup>3</sup>Kierkegaard, *Fear and Trembling*, p. 29.

<sup>4</sup>Ibid., p. 8.

<sup>5</sup>Ibid., p. 32.

<sup>6</sup>Ibid.

<sup>7</sup>Ibid.

<sup>8</sup>Ibid.

<sup>9</sup>Ibid., p. 32-33.

mundane knight of faith, he lives faithfully and meaningfully, but his actions appear unremarkable.

When describing how the mundane knight goes about his day, de Silentio mentions that he thinks fondly about the dinner that his wife has ready for him at home.<sup>10</sup> However, de Silentio emphasizes that “it is all the same to him” whether or not there is a special dinner for him or just the usual one.<sup>11</sup>

Furthermore, in this example de Silentio notes that the mundane knight “does not have four beans [the equivalent of two US cents] and yet he firmly believes that his wife has that delectable dish for him.”<sup>12</sup> That is to say, even whilst not having any grounds for believing that his household can afford a special dinner, he nonetheless has faith that he will be met with a special dinner at home.<sup>13</sup>

### 2.3 Faith as a Double-Movement

In these two examples, Abraham and the mundane knight are both defined as faithful, but act in markedly different manners. This is possible because faith is not a specific set of external actions. In the case of Abraham and Isaac, faith is not contained in any particular moment of Abraham’s journey up Mount Moriah, nor in the outcome of the journey. Rather, it is expressed through the *way* that Abraham makes the journey. Similarly, for the mundane knight, faith is not contained in any particular action he takes throughout his day, nor at the end of his workday, at dinner time. As with Abraham’s faith, the mundane knight’s faith is *how* he goes about his day.

Thus, instead of a particular set of actions, de Silentio describes faith as a “movement,”

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<sup>10</sup>Ibid., p. 33.

<sup>11</sup>Ibid.

<sup>12</sup>Ibid.

<sup>13</sup>Note that, in this example, the mundane knight seems to hold contradictory beliefs. In thinking about the dinner fondly, he holds that (1) there is a special dinner at home. However, in resigning the dinner, he holds that (2) there is not a special dinner at home. At the same time, it doesn’t matter to him whether or not there is a special dinner for him at home. Here we get a glimpse into the apparent absurdity of faith.

specifically a *double movement*.<sup>14</sup> It is a movement between self and world, between one and one's actions. As an exemplar of faith, Abraham constantly the movement of faith. Going up Mount Moriah, he has a faithful perspective towards the world, expressed in his faith in God providing a lamb to sacrifice. As a perspective toward the world, faith is a movement between himself and the world, and thus faith is a movement.

Furthermore, faith is a double movement because it involves two movements occurring simultaneously. The first movement is infinite resignation, and the second is the movement of faith. Here, "first" and "second" do not signify that one movement occurs the other in time. Rather, the "second" movement is done *on top of* the "first" movement. In other words, the first movement is necessary, but not sufficient, for the second movement.

The "first" movement, infinite resignation, involves *renouncing the finite*. The finite consists of "things... in the world."<sup>15</sup> In other words, it consists of material objects in a human individual's external world. For the mundane knight, his office building, his desk, and his pencil are all part of the finite. Moreover, the dinner he thinks of when walking home is also part of the finite. Although the dinner is not an object that he immediately perceives, it is an object whose existence is external to him, insofar as it is something that can exist somewhere in the world.

In this way, the finite describes the finite relationship between a human being and the objects that make up their reality. For the mundane knight, the finite is his world of objects, of desks, buildings, and dinner. Abraham's finite world, similarly, is characterized by his relationship to finite objects – his relationship to Mount Moriah, to the sky, and to Isaac.

Thus, in the movement of infinite resignation, one accepts the finite character of their reality and existence as a human being, and therefore accepts the finite character of the various relationships between themselves and the objects that make up their reality. In doing so, they *renounce* the finite, or more specifically, they renounce that finite objects

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<sup>14</sup>Kierkegaard, *Fear and Trembling*, p. 28.

<sup>15</sup>*Ibid.*, p. 34.

can have infinite meaning.

That is to say, they reject the existence of infinite, unlimited possibility for finite, limited objects. They reject that they can have everything, and that all things will last forever for them. They renounce all of the relations between themselves and the world, resigning themselves *from* the finite, and this renunciation is infinite resignation.

This is exemplified when the mundane knight thinks about his dinner. It is possible that his wife has a special dinner waiting for him, but he is well aware that all odds are against this possibility. In accepting this, that it is virtually impossible that his wife has a special dinner waiting for him, he accepts that his relation to the dinner is impossible. In this way, he forms a relationship to a finite object, namely his dinner, and then renounces it, by accepting its impossibility. He renounces the finite, renounces the dinner, and is resigned to infinity.

The second movement, the movement of faith, involves *receiving the finite back*.<sup>16</sup> In other words, in making the movement of faith, the faithful person continues to relate to the finite despite having renounced the finite. The mundane knight resigns the special dinner by acknowledging its impossibility, but continues to have faith that it is waiting for him. He makes the movement of faith by relating to the dinner that he has renounced.

Thus, the first movement is a movement based upon reason, while the second movement is not within the realm of “human calculation.”<sup>17</sup> The first movement is a movement from reason because the finite character of finite objects can be understood by human reason, and therefore the renouncing of the finite can be motivated by this understanding. However, the second movement is neither reasonable nor motivated by reason—it is based upon the impossible.

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<sup>16</sup>Ibid., p. 31.

<sup>17</sup>Ibid., p. 29.



### 3 The Absurd

This account of faith seems to be absurd. To make the double movement of faith, one must simultaneously renounce the finite and receive the finite. In the case of the mundane knight, it seems that he must renounce the possibility of a special dinner, while still believing that there is a special dinner waiting for him. In the case of Abraham, he climbs Mount Moriah, believing that he will have to kill Isaac when he reaches the top, yet still has faith that Isaac will live. Thus, de Silentio argues that, “[Abraham] believed by virtue of the absurd.”<sup>18</sup> In this section, I will explain what de Silentio means by “absurd.” I will then show that faith is not absurd.

#### 3.1 De Silentio’s “Absurd”

If faith is absurd, then it must have contradictory elements. De Silentio sees faith as absurd because one has to believe by virtue of the absurd. Thus, for de Silentio, the absurdity of faith is a contradiction of beliefs.

As a contradiction of beliefs, the absurdity of faith can be expressed as two conflicting propositions,  $P$  and  $\sim P$ . In order to perform the double-movement of faith, it seems that the faithful person must believe in these propositions, and therefore it seems that faith is absurd.

For the mundane knight, it seems that he has to believe that (1) there is not a special dinner at home, while also believing that (2) there is a special dinner at home.

His belief that there is not a special dinner at home is a part of the movement of infinite resignation. He renounces the finite, and in doing so, renounces the dinner, a finite object in his external world. Thus, the first proposition he believes,  $\sim S$ , is that there is not a special dinner at home.

In performing the movement of faith, he receives the finite back. This is represented by

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<sup>18</sup>Kierkegaard, *Fear and Trembling*, p. 30.

him holding a second, apparently contradictory proposition, S: there is a special dinner at home.

Abraham, to perform the double-movement of faith, has to hold D and  $\sim$ D: Isaac will die, and Isaac will not die.<sup>19</sup> He has to believe that Isaac will die because, in order to be faithful to God, he must follow his command and sacrifice Isaac, and he must believe in this sacrifice. However, since he has faith that a lamb will be provided by God for the sacrifice, he also seems to believe that Isaac will not die. Therefore, his faith seems absurd because it seems that he has to believe that (1) Isaac will die, while simultaneously believing that (2) Isaac will not die.

God's command to sacrifice Isaac is a test of this faith, a test which makes clear the apparent absurdity of faith.<sup>20</sup> As I stated earlier, faith is not a specific set of identifiable actions. Thus, it is invisible to outside observers (such as de Silentio). God's command is a way of making the invisibility of faith visible, by making Abraham perform a specific action, sacrificing Isaac, that seems to contradict Abraham's belief that Isaac will not die.

Abraham must follow God's command, because for Abraham, God's command is the highest law. As such, he has to accept that Isaac will die, because the logical conclusion of following a command to make a sacrifice is the death of the one sacrificed.

However, God's command is only a test, and not the entirety of Abraham's faith. Isaac will die because God commanded Abraham to sacrifice him, but Isaac, as a mortal being, is destined to die regardless. Abraham, in making the movement of infinite resignation, has accepted that Isaac will die, even before God commanded him to sacrifice him.

Thus, in making this movement, before, during, and after his journey up Mount Moriah, Abraham believes that Isaac will die, and therefore accepts that the object that makes up his self-defining relation will be lost.

However, as an exemplar of faith, Abraham must also make the movement of faith. To

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<sup>19</sup>It doesn't matter which comes first, the negative or the positive statement. All that matters is that one proposition represents infinite resignation ( $\sim$ S, D), and the other represents faith (S,  $\sim$ D). Abraham's faith can also be represented as  $\sim$ I and I, or Isaac will not live and Isaac will live.

<sup>20</sup>Kierkegaard, *Fear and Trembling*, p. 7.

do this, it seems that he must believe that Isaac will not die. He has to hold that he will not have to sacrifice Isaac, that the meaning of his life will not be lost.

Isaac is the meaning of Abraham's life because Isaac is a self-defining relation for Abraham. That is to say, Abraham is defined, and defines himself, as the father of Isaac. Isaac is the content of the wish that brought meaning to Abraham's life, the object of God's promise to fulfill this wish, and the result of the fulfillment of that promise.<sup>21</sup> Abraham's entire existence is defined by Isaac, and his fatherly love for Isaac. If he only believed that Isaac would die, his life would be void of meaning, and he would not be an exemplar of faith. He therefore has to believe in the reverse.

Thus, in this view, in order to have faith Abraham has to believe that Isaac will die, while simultaneously believing that Isaac will not die. These two beliefs contradict, and because of this, faith seems to require absurdity.

### 3.2 Resolving the Absurdity

Faith, however, is not absurd. This is because what seems to be absurd in faith is not a contradiction between two different beliefs about the same thing. Rather, "Isaac will die" is a belief, while "Isaac will not die" is not a belief. "Isaac will die" is an assertion about Isaac, the object of a relation, while "Isaac will not die" is about *Abraham*, specifically how Abraham orients himself towards the world. In other words, "Isaac will not die" is a description of the way a subject relates to the world, and not about the object of the relation. Thus, the absurd is not a contradiction because the propositions describe two different things in different contexts.

First, consider the first component of the absurdity, or the belief that Isaac will die. "Isaac will die" is a statement about the condition of Isaac, a material object in Abraham's external world. To believe in such a statement is to believe that a specific object, Isaac, will be in a specific condition, dead, at a later point in time. Because God commanded

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<sup>21</sup>Kierkegaard, *Fear and Trembling*, p. 14-15.

Abraham to kill Isaac, and because Abraham is an exemplar of faith and must follow God's commands, Abraham must believe that Isaac will die.

Furthermore, as I stated earlier, even if God had not commanded Abraham to kill Isaac, since Isaac is mortal, he must die. That Isaac will die is necessary, and therefore to believe that Isaac will die is to believe that something that must happen will happen. Much like how the mundane knight accepts the impossibility of having a special dinner, Abraham accepts the impossibility of Isaac's immortality. "Isaac will die" is thus a belief about an object, and is a statement with a reasonable basis.

Now, consider the supposedly contradictory "belief" that Isaac will not die. As I stated earlier, such a "belief" is not a belief in the sense as "Isaac will die" is a belief, but instead is an *orientation* towards one's existence. That is to say, "Isaac will not die" is an expression of the *way* Abraham exists, of *how* he engages with the world. It is the fundamental relation between Abraham and the world. It is not a belief that Abraham holds about an object in the world.

It is a relation, furthermore, of *meaning*. In loving Isaac, Abraham fulfills the meaning of his existence. I mean this in the sense that Abraham's relationship with Isaac is the essential component for Abraham's understanding of his own existence and his engagement with the world. In other words, his love of Isaac is a relation between himself and the world, and this relation is the meaning of existence for Abraham.

Since Abraham has faith that Isaac will not die, the meaning of his existence will continue even if the object which defines the meaning, Isaac, is lost. Abraham can still relate to the world in the way that was made possible by his relation to Isaac, even if Isaac dies.

This is similar to the mundane knight's orientation towards the dinner. Although the mundane knight thinks of it fondly, it is irrelevant whether he actually obtains it. The object of his relation is not important—his relation to the world is what is actually important. He is happy to have dinner, whether or not it is the particular one he wants.

His happiness is particular, because it is a particular relationship to the world, but the object in the world it relates to, namely his dinner, is not particular. The relationship he has towards his dinner is indicative of his overall relationship towards the world.

To illustrate, suppose that the mundane knight arrives home to no dinner at all. In this case, the meaningful relation to the dinner still exists, despite the absence of dinner, and the absence of the particular dinner he had in mind. If there is no dinner, then the mundane knight fulfills his meaningful relation, he fulfills his faith, by other means. Perhaps he and his wife go to a friend's house for dinner, or make dinner together, or snack on crackers and cheese. In any case, he reinterprets his earlier wish in a new context, maintaining his faith in the face of change.

Thus, even if Isaac had died on Mount Moriah, after his death, Abraham would still have faith that Isaac would not die. He would have to reinterpret his faith, and engage with the world in a new way, but his relation to the world would remain. He would still relate to the world as the father of Isaac, even following his death. That is to say, Abraham would still be able to find meaning in the world by relating to it the same way he related to Isaac.

Furthermore, Abraham's relation to Isaac was formed before the birth of Isaac, which shows that Abraham's "belief" that Isaac will not die is actually a way of relating to the world. This relation, which existed before Isaac's birth, is Abraham's faith in God's promise of a son. Abraham, before the birth of Isaac, relates to the world as if he is the father of Isaac, because of this promise. After the death of Isaac, then, Abraham will still relate to the world as if Isaac were alive, since the relation that Abraham has to the world is defined by his relation to Isaac. However, as with the mundane knight, Abraham's relation to the world does not require a particular object. It is the way that he relates to the world that matters, not the object of his relation.

Thus, "Isaac will die" is a statement about the condition of an object in the world, while "Isaac will not die" is a statement about the way a subject relates to the world. Such a relation *can* be fulfilled by the presence of a particular object, but it does not require one.

While Isaac is alive, Abraham has faith that Isaac will not die. And if Isaac were to die, Abraham would still have faith that Isaac will not die, because his faith is a relation and an orientation towards the world, not a belief.

In having a certain orientation towards the world, Abraham confers meaning onto all of the finite, that is, onto the world in general instead of one object in particular. That being said, it is important that his *relation* is particular, even if it relates to the world in general. Abraham relates to the world *as if* Isaac, and Isaac in particular, lives, but not *because* Isaac lives.

Again, this does not mean that his relation to Isaac will be lost. Because Abraham still possesses the ability to relate, his relation to the world defined by his relation to Isaac can still exist, even if Isaac is gone. That is to say, the way Abraham relates to Isaac can persist even if Isaac can no longer be related to. Thus, Abraham is able to find meaning in the world through relating to it the same way he related to Isaac.

Along with this, both statements, “Isaac will die” and “Isaac will not die,” are also descriptions of possibilities. Although Isaac must die, because God commanded Abraham to sacrifice him, on the journey to Mount Moriah, Abraham had not sacrificed him *yet*. Thus, “Isaac will die” is not a statement about Abraham’s present reality. By this, I mean that it is not a statement that can be verified as true by appeal to Abraham’s current finite world, since, on his journey up Mount Moriah, it has not yet occurred. Similarly, “Isaac will not die,” as a relation to the world, is also not a statement about what is currently happening. In this way, both statements are descriptions of *future* possibilities for Abraham.

To believe that Isaac will die while “believing” that Isaac will not die, then, is to have a certain orientation not only towards the world, but also towards the future. While the possibility of Isaac dying is necessary for Abraham, it isn’t actual yet, and thus to believe in it is to believe in a particular future. In other words, “Isaac will die” is necessary in the sense that it has to happen in the future, and possible in the sense that it hasn’t happened

yet.<sup>22</sup>

Furthermore, having faith that Isaac will not die contains this element of accepting the possibility of a particular future, but also contains an element of *atemporality*. That is to say, faith is timeless, not bound to the forward momentum of the temporal world. While the actions of a faithful person may change over time, their faith does not. Their faith is a consistent relation to the world— the world is that which changes over time. This is shown in Abraham’s faith, which requires him to make two moves, the second of which contains an atemporal element.

He first holds that (1) although it is necessary for Isaac to die, that either he lives or dies are possibilities. Isaac must die on Mount Moriah, because Abraham was commanded to sacrifice him. However, even if Isaac were to survive on Mount Moriah, as he does in the story, he must die eventually, because he is mortal. As a mortal being, furthermore, the possibility of death persists at every point. Mortality is tied to temporality, because it is bound to change over time.

Abraham must simultaneously hold that (2) regardless of whether Isaac lives or dies, the relation to the world formed by his relationship to Isaac will remain. Unlike the possibility of Isaac’s life and death, this is an atemporal stance. The meaning of Abraham’s life is defined by his relationship to Isaac, but it is defined by the *relation*, not by Isaac. Abraham was able to relate to the world in a certain way because of his relationship to Isaac, and this relation can persist regardless of the condition of Isaac. The world may change, but Abraham’s relation to the world does not. Thus, the mortality of Isaac does not play into Abraham’s continuous relation to the world, and therefore, this relation is atemporal.

As such, one can be faithful regardless of whether the object making up one’s self-defining relation is present or absent. While Isaac was present, while he was alive,

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<sup>22</sup>However, the existence of one possibility also implies the existence of its negation. This is because, if it is possible for something to happen, it must also be possible for it to not happen. That it is possible for Isaac to die on Mount Moriah means that it is possible for Isaac to not die on Mount Moriah, even if one is certain that one outcome will happen, because neither have happened *yet*. In this way, in believing that both Isaac will and will not die on Mount Moriah, Abraham recognizes that one possibility must become actual when he reaches the top of Mount Moriah, but it is possible for either to happen.

Abraham had faith, because he had already accepted that Isaac would eventually become absent. Faith is thus not necessarily a matter of responding to loss, but responding to the *possibility* of loss.

In this way, infinite resignation involves (1), or the belief that Isaac will necessarily die, and the movement of faith involves (2), or the orientation to the world that remains regardless of Isaac's condition. Infinite resignation involves (1) because it involves accepting the necessity of loss, specifically the loss of the object which confers meaning onto one's existence. The movement of faith involves (2) because it involves perpetuating the meaningful relation to the world.

Thus, to make the double movement of faith is to find meaning out of meaninglessness. One admits the possibility of meaninglessness by admitting the possibility of losing the meaning of one's life, and makes meaning by maintaining a meaningful orientation to the world.

Therefore, to live faithfully is to constantly and consciously orient oneself towards the world such that meaning can be made out of meaninglessness. Or, to put it another way, to live in such a manner is to relate to the world with a relation that does not require a particular object.

Furthermore, such a life is consistent with both extraordinary actions, as in the case of Abraham, and ordinary actions, as in the case of the mundane knight. All that is required for a faithful life is for one to make the double movement. Faith, rather than a specific set of actions or a belief, is in this way a continuous reinforcement of a particular meaningful orientation towards the world and towards the future.



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# A DIGNIFIED ZONE OF REFUGE THEORY OF PRIVACY

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**Abstract.** As the rate of technological growth has surged forward, the philosophy of privacy and relevant Fourth Amendment doctrine has struggled to keep pace. One area of privacy that lacks adequate protection under existing privacy discourse and Fourth Amendment case law involves covert invasions of privacy, or violations of privacy in which the watched is unaware that they are being watched and therefore experiences no inhibition of freedom of action despite being watched. As far as I am aware, no theory has been put forward thus far that persuasively articulates a harm generated by unseen and unfelt violations of privacy.

In this article, I hope to put forward a theory of privacy, what I call the “Dignified Zone of Refuge,” that can help us solve philosophical problems that arise from covert privacy violations. I will first detail my philosophical theory of privacy, then apply that theory to the problem of uncovering a harm generated by covert violations of privacy.<sup>1</sup>

## 1 Introduction

As the pace of technological growth has surged forward, although the philosophical discourse regarding how changes in technology are affecting moral interactions within and between the community and state has proliferated, no persuasive account of the harm of covert privacy violations has been presented. In this paper, I will focus on the unfolding

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<sup>1</sup>I express my deep gratitude to Jordan Wallace-Wolf for his extensive efforts in helping bring this paper to fruition. I also extend my appreciation to David Sklansky for not only inspiring me to write this paper but actively encouraging me to do so.

discussions present in the philosophy of privacy.

Partially due to the present unclarity on the moral purpose of privacy, significant worries exist about our institutions' ability to protect our privacy. In a recent federal district court case the Court noted its own "concern . . . that current Fourth Amendment doctrine may be materially lagging behind technological innovations."<sup>2</sup>

Unfortunately, this concern seems to be empirically warranted. Journalist Declan McCullagh recently reported that current and former officials of the United States Federal Bureau of Investigation (FBI) have confirmed that the FBI has pivoted from recording particular suspects' online actions to "assembling the activities of thousands of Internet users at a time into massive databases" so that they may have a more complete database from which to pull information about suspects.<sup>3</sup> Needless to say, this is an extremely worrying discovery. Moreover, as evidenced by the famous Snowden debacle, the government may be engaging in far-reaching surveillance programs that the public does not even become aware of until the programs have existed for years.

It seems clear to me that such covert programs still constitute a violation of our privacy rights during their operation and not merely once discovered. Such programs constitute morally impermissible invasions of privacy despite the fact that we are unaware of them and thus despite the fact that these programs may not directly affect our everyday lives. A persuasive theory of privacy must therefore be able to explain exactly why such programs violate our privacy rights, even if the data is collected covertly. As far as I am aware, theorists have thus far been unable to put forward such a theory.

Lack of clarity about the moral purpose of privacy has also resulted in collateral confusion about how privacy laws should be structured and, relatedly, how our privacy should be protected. One result of this confusion is that the Court has accidentally pigeon-holed itself into a limiting understanding of the harms generated by privacy violations. Thus far, the Court seems to have implicitly located the harm in violations of

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<sup>2</sup>See *United States v. Chatrrie*.

<sup>3</sup>See McCullagh, *FBI Turns to Broad New Wiretap Method*.

privacy in “chilling effects” that individuals targeted by surveillance may suffer.<sup>4</sup> As I will soon show, this narrow understanding of the harm inherent in violations of privacy can be highly problematic.

I do not wish to deny that chilling effects may exist and may be deeply tied to privacy concerns. However, as the Court concluded in *Laird v. Tatum*, alleging that one is suffering from chilling effects as a result of a surveillance program that one does not know is targeting them does not constitute showing certainly impending injury as a result of that program. Thus, merely alleging a harm of chilling effects in cases involving covert surveillance programs that do not announce the targets of their surveillance does not satisfy the Article III requirement of standing that one must meet to challenge the constitutionality of the program before the Court.

Therefore, in the status quo, with the Court’s current understanding of privacy, individuals are unable to argue before a court that covert surveillance programs violate their Fourth Amendment privacy rights and are therefore unconstitutional because they lack standing to bring the issue before the Court in the first place. We therefore need to develop a new theory that can not only show why covert invasions of privacy are wrong, but can also explain the harm generated by invasions of privacy entirely abstracted from any chilling effects imposed upon individuals so that individuals can meet the burden of standing necessary to challenge the constitutionality of covert surveillance programs.

In this article, I hope to put forward such a theory. I plan to focus only on privacy concerns in Fourth Amendment contexts, but I expect that some of my conclusions can help us solve both philosophical and legal problems that arise from surveillance that entails watching a person in order to catch or stop wrongdoing. I will first, in Section II., detail a philosophical theory of privacy (what I call the Dignified Zone of Refuge), then, in Section III., apply that theory to the problem of uncovering a harm generated by covert violations of privacy.

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<sup>4</sup>E.g., see *Laird v. Tatum*; and Sotomayor’s opinion in *United States v. Jones*.

## 2 A Dignified Zone of Refuge

In this section, I will present my philosophy of privacy, which I call the “Dignified Zone of Refuge.” I structure my theory as a type of Zone of Refuge theory of privacy, because it is influenced by the argument advanced by David Alan Sklansky that understanding privacy through the lens of a zone of refuge captures the appropriate level of breadth that a persuasive theory of privacy must encompass. I refer to my philosophy of privacy as the Dignified Zone of Refuge theory to emphasize that one way in which one can properly understand the Zone of Refuge theory is to ground the concept of a private zone of refuge within a Kantian conception of human dignity. In the following section, I will detail how I understand the Kantian conception of dignity, how I ground a Zone of Refuge theory of privacy in Kantian dignity, and why it is reasonable to ground privacy in Kantian dignity.

### 2.1 Philosophical Groundwork: The Kantian Conception of Dignity

Before going into the details of my theory of privacy, I want to begin by exploring its philosophical foundation. I intend to ground my theory in Kantian moral philosophy as interpreted by philosopher J. David Velleman. It is important to begin this discussion by noting that Kantian moral theory stands in stark opposition to consequentialist accounts of morality because Kantian morality “makes fundamental demands on an agent’s practical thought.”<sup>5</sup> It is not enough for the most “morally righteous” outcome to occur, or even for one to do a morally righteous action. Rather, one must have the proper attitude, or approach the situation, in the proper way in order for one’s actions to be properly morally upright.<sup>6</sup> By structuring how one thinks about the empirical world through the proper attitude, one will ensure that one not only behaves in morally correct ways but is, in fact,

<sup>5</sup>Velleman, “Love as a Moral Emotion,” p. 339.

<sup>6</sup>This interpretation of Kant is confirmed by Nafsika Athanassoulis in her article, “Kant on Luck” when she notes, for Kant, “it is not enough that one acts in conformity with the moral law, as this is something that may happen due to luck, but one must affirm the moral law by acting for its sake”; cf. Athanassoulis, “Kant on Luck,” p. 168.

morally righteous.<sup>7</sup>

The proper attitude one must embody in order to achieve moral righteousness is respect for the moral law. Crucially, in respecting the moral law, one is, properly speaking, respecting the idealized, rational, intelligible will. This arises because one can cognize an idealized, rational will that acts perfectly morally. It therefore acts in accordance with Kant's "Categorical Imperative"<sup>8</sup> because the Categorical Imperative is the "ultimate principle from which all our duties and obligations are derived."<sup>9</sup> The rational will therefore only sets for itself maxims in accordance with the moral law, or lawlike maxims.

In this manner, the idealized, rational will serves as a paradigm for the actual, empirical will to strive towards<sup>10</sup> insofar as the idealized will is perfectly moral. Kant confirms that this "ideal will" that only acts on lawlike maxims is "the proper object of reverence"<sup>11</sup>. Thus, in adopting the proper attitude necessary for moral righteousness, one shows respect for the moral law, which is to show due reverence for the rational will. Therefore, in being morally righteous, one must adopt proper attitudes of respect towards the rational wills of persons.<sup>12</sup>

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<sup>7</sup>While Kant's famous "Categorical Imperative" is often assumed to be the base of his theory of morality, Velleman persuasively explains that this is not quite true. It is not the case that one must merely assume the proper attitude towards moral imperatives, such as the Categorical Imperative or the Formula of Humanity, to be morally righteous. Rather, one must adopt the proper "attitude toward the idealized, rational will" that each person, by virtue of being a person, has. The moral principles Kant enumerates are principles one must abide by in order to embody the proper reverence due for the rational will of others. I.e., we manifest the respect we owe to others by adopting the moral principles as our own. E.g., if one embodies the proper reverence due for others, then one will adopt the Categorical Imperative as his own, and therefore only act on maxims that he can universalize, and thereby, among others, avoid violating the privacy rights of others. I will later explain why a maxim to violate the privacy rights of others cannot be universalized; cf. Velleman, "Love as a Moral Emotion," p. 347.

<sup>8</sup>Kant, *Groundwork of the Metaphysics of Morals*, p. 440.

<sup>9</sup>Rachels, "Kantian Theory," p. 1, I will explain what the Categorical Imperative entails when I highlight how invasions of privacy fail to meet its standards in Section 2.2.

<sup>10</sup>Velleman, "Love as a Moral Emotion," p. 344.

<sup>11</sup>Kant, *Groundwork of the Metaphysics of Morals*, p. 440.

<sup>12</sup>By extending this reasoning, I can explain why we must show proper respect for the rational will of others and not just our own rational will. In holding up our own rational will as an ideal to be strived towards, we thereby value that ideal. However, in order to properly value that ideal within ourselves, we must properly recognize and value that same ideal in others. As Velleman explains, the rational will "cannot first take itself seriously if it treats instances of itself as nothing more than means to things that it already values. I cannot properly respect the ideal of my own rational will if I do not value or respect other instances of that rational will as found in other rational beings. I therefore must make the object of my reverence not only my own rational will but also the idealized rational wills of others; cf. Velleman, "Love

An interesting feature within Kant's theory is that the rational will is both law-giving and law-following. It is law-giving because it holds up the moral law for itself through its own reasoning. Insofar as the rational will is law-giving unto itself, "reverence for this ideal [will] is also reverence for the will as a self-governing authority."<sup>13</sup> The rational will is also law-following because, in recognizing the value of the moral law, it accepts the constraints the moral law places upon its potential maxims and therefore only wills lawlike maxims. Therefore, in showing proper respect for the rational will of others, one must respect their nature both as a law-giver and as a law-follower, which is to respect their capacity to be morally good.<sup>14</sup>

In respecting the rational will of others, one is respecting their "intrinsic worth" in virtue of their being a rational agent.<sup>15</sup> In his theory of valuing, Kant defines the value that persons possess in virtue of their rational nature their "dignity."<sup>16</sup> Therefore, in adopting the proper attitude of respect towards the rational will of others, one is respecting the dignity they possess.

To properly understand a value that is a dignity, one must understand Kant's distinction between a value that is a dignity and a value that is a price. Values of price consist of ends that are "possible results of action,"<sup>17</sup> or ends that can be actualized. These are "objects of preference and choice"<sup>18</sup> insofar as we are unable to actualize all possible ends due to our embodied, finite nature and therefore have to prioritize the ends that we actualize. Thus, values of price are values that are brought about by action, and therefore must be able to be compared to one another because we cannot actualize all possible ends.

Values of dignity, on the other hand, cannot be properly compared to one another.

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as a Moral Emotion," p. 366.

<sup>13</sup>Velleman, "Love as a Moral Emotion," p. 347.

<sup>14</sup>This idea will become crucial when analyzing the problem with covert violations of privacy in Section 3 and Section 4.

<sup>15</sup>Rachels, "Kantian Theory," p. 1.

<sup>16</sup>Kant, *Groundwork of the Metaphysics of Morals*, 4:434.

<sup>17</sup>Velleman, "Love as a Moral Emotion," p. 364.

<sup>18</sup>*Ibid.*, p. 364.



Values of dignity are what Kant calls “self-existent ends”<sup>19</sup> in that they are ends which bear no question of actualization because the end, e.g., the person, already exists. Self-existent ends, such as the rational will or one’s rational nature, have a value which “doesn’t serve as grounds for comparing it with alternatives; it serves as grounds for revering or respecting the end as it already is.”<sup>20</sup> There is no preference or choice associated with respecting self-existent ends because such ends, or values of dignity, e.g., instances of rational nature, must be valued in and of themselves — there is no alternative value that we can revere instead.

Insofar as one’s dignity is a self-existent end, it “warrants a different mode of appreciation, consisting of motives and feelings in which we submit to the object’s reality rather than strive toward its realization.”<sup>21</sup> The motives and feelings by which we submit to the object’s (the rational will’s) reality is reverence for the rational will. Each and every person has a dignity in virtue of being a rational being and everyone is owed due reverence for their dignity.

Respecting the dignity of others underlies many rights that rational beings have. Next, I will argue that understanding Fourth Amendment privacy rights as one category of rights that flow from the obligation to show due reverence for the rational will of others can help us better understand the nature of privacy and the extent of our Fourth Amendment privacy rights.

## 2.2 My Theory: A Dignified Zone of Refuge

It is my theory that, in cases related to Fourth Amendment privacy concerns, part of the fundamental act of respecting someone’s dignity and thereby respecting their capacity for moral goodness entails the government affording the person a private zone of refuge within which they can properly actualize their nature as a law-giver and a law-follower absent the

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<sup>19</sup>Kant, *Groundwork of the Metaphysics of Morals*, 4:437.

<sup>20</sup>Velleman, “Love as a Moral Emotion,” p. 364.

<sup>21</sup>*Ibid.*, p. 367.

government's watchful gaze.<sup>22</sup> In this section, I will explain how I come to this conclusion.

In respecting the dignity of another, Kant's Formula of Humanity explains that one should "act so that you treat humanity [the rational will] . . . always as an end and never as a means only."<sup>23</sup> Using another person merely as a means rather than an end in itself constitutes failing to show proper respect for their rational nature. This is done by failing to recognize and act in accordance with the fact that they are a "free agent capable of making their own decisions, setting their own goals, and guiding their conduct by reason."<sup>24</sup>

One fails to respect another's capacity for making their own decisions, or appreciating the value of ends, by denying their nature as one who is capable of showing due reverence for the dignity of others for its own sake. This can be done, I would argue, through excessive surveillance.

This point can be illustrated with the following hypothetical: Imagine a world in which the government deployed a microscopic robot that incessantly followed one around and watched all of one's actions. This robot could be used by the government to stop any potential criminal activities, or even any potential wrongdoing, by relaying any suspicious activity to the authorities. However, if one never engages in moral wrongdoing, perhaps by showing due reverence for the dignity of others for its own sake, then the robot would be an unseen and unfelt presence.

I would argue that this robot, through its mere presence, even absent any direct intervention, constitutes the government denying one's capacity for moral goodness. It shows a fundamental lack of respect for one's nature as a law-giver and a law-follower and therefore a lack of respect for one's dignity. I will now show why this is the case.

When respecting the value of dignity, one must engage in a "mode of appreciation" that

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<sup>22</sup>One may wonder why the government is bound by Kantian obligations. George Smith, in his series "Immanuel Kant on Our Duty to Obey Government," points out that, for Kant, "the protection and enforcement of individual rights is at once the proper purpose of an ideal government and the standard by which a government should determine proper legislation." I would argue that an individual's dignity lies at the base of an individual's rights. Therefore, in the course of protecting individual rights, the government is obligated to respect the dignity of its citizens; cf. Smith, *Immanuel Kant on Our Duty to Obey Government*.

<sup>23</sup>Kant, *Groundwork of the Metaphysics of Morals*, 4:437.

<sup>24</sup>Rachels, "Kantian Theory," p. 1.

consists “of motives and feelings in which we submit to the object’s reality.”<sup>25</sup> The object one is responding to when respecting the dignity of another is that person’s rational nature. Thus, in submitting to the reality of another’s rational nature, and thereby in respecting their dignity, one is respecting their capacity for moral goodness.

To respect one’s capacity for moral goodness, and therefore to respect one’s nature as a law-giver and law-follower, one must, at least, avoid displaying a lack of trust in their capacity to show due reverence for the dignity of others for its own sake. Otherwise, one fails to respect their capacity for moral goodness and therefore show a lack of respect for their dignity.

In deploying the microscopic surveillance robot, the government is displaying fundamentally morally problematic attitudes. The government, through the robot, in refusing to afford the individual a private zone of refuge within which they are free to show due reverence for the moral law for its own sake, displays a lack of trust in that individual’s capacity to be morally good for its own sake. The government, therefore, would be denying their nature as a law-giver and a law-follower. They would thereby refuse to properly appreciate the self-existent end that is their rational will. The government would therefore be using them merely as a means to their project to stop wrongdoing. Thus, the mere act of incessantly watching a person and refusing to afford them a private zone of refuge free from the government’s surveillance is to show a lack of respect for the dignity of the watched. Incessant surveillance, therefore, is morally impermissible.

One may question why the government is morally obligated to trust its citizens to avoid wrongdoing. Insofar as wrongdoing does, in fact, happen, then it seems that its citizens’ rational agency frequently fails to properly constrain their possible maxims to avoid wrongdoing. Moreover, by exhibiting a generalized suspicion against its entire populace, the government could feasibly stop criminal wrongdoing altogether, which seems to be a very good goal.

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<sup>25</sup>Velleman, “Love as a Moral Emotion,” p. 367.

However, in taking up an attitude of generalized suspicion against its citizens, the government would be treating each of its citizens as guilty until proven innocent, rather than the other way around. Adopting such an attitude, as previously argued, is to deny its citizens' natures as beings capable of cognizing moral goodness and valuing it for its own sake. Given rational beings' natures as law-givers and law-followers, I would argue that the government has reasons to respect that nature until given reasons not to. I am not condemning all government surveillance, but merely proactive government surveillance that is put into operation before any suspicion of wrongdoing.<sup>26</sup>

Therefore, one angle from which Kantian philosophers can establish the necessity of a private zone of refuge free from government surveillance is the following: in order for the government to show due reverence for the dignity of its citizens, it must orient its practical cognition in light of the acknowledgment that rational beings, in virtue of their rational nature, are law-givers and law-followers. To properly respect its citizens' natures as individuals capable of showing due reverence for the moral law for its own sake, the government cannot incessantly surveil them to ensure that they do so. If the government failed to afford its citizens a space free from the government's suspicious gaze, then the government would fail to respect its citizens' rational natures and thus fail to respect their dignity, which is morally unacceptable. The government, therefore, owes its citizens a space free from government surveillance, what I call a Dignified Zone of Refuge.<sup>27</sup>

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<sup>26</sup>E.g., the FBI program mentioned previously proactively surveils citizens insofar as it amasses records about their online activities before the government suspects any wrongdoing. While such techniques may aid their efforts in stopping crime, I argue that they fail to respect the dignity of the civilians whose records they amass.

<sup>27</sup>I will note that this approach does not articulate the proper extent of the private zone of refuge. It also does not explain long-standing intuitions regarding what the zone of privacy centers around, e.g., the body, the home, and intimate relationships. I believe that further philosophical analysis can explain the proper size of the zone of refuge and incorporate these other angles of approaching the importance of privacy. I do not present such analysis in this paper both because I am, to be frank, presently unable to do so and because such analysis lies beyond the scope of this paper.

### 2.3 A Defense of Grounding Privacy Rights in Dignity

For various reasons, scholars have criticized justifying privacy rights through an appeal to human dignity. In this section, I will defend my theory against such criticisms.

Some have argued that the Kantian conception of respect for dignity encapsulates issues broader than invasions of privacy and therefore is not a useful concept to ground privacy within.<sup>28</sup> Surely, not all situations in which one fails to show respect for another's dignity constitutes a violation of the other's privacy rights.

It seems to me a strength of the Dignified Zone of Refuge theory that it is able to explain how the moral wrongness inherent in invasions of privacy is the same type of moral wrongness inherent in other forms of moral impermissibility. One may be uncomfortable with invoking such a broad concept as dignity, which surely underlies more than just the moral interest in privacy. However, if one can provide a philosophically rigorous explanation of how privacy rights are one category of rights that flow from the obligation to show due reverence for the dignity of rational beings, then I fail to see why there should be an issue in grounding the right of privacy in human dignity.

Others have similarly argued that the concept of dignity is too vague for us to ground privacy within.<sup>29</sup> However, my theory of privacy can specifically articulate exactly what the moral impermissibility of invasions of privacy consists of. While it may be the case that the use of the word "dignity" in our everyday language is vague to be properly applied to privacy theory, a careful and detailed exploration of the Kantian conception of respect for dignity is not susceptible to the same criticism.

The last concern I would like to address is presented by theorists that criticize the liberal model of selfhood they believe that liberal privacy theorists rest their theories on. They worry that the traditional liberal view of privacy seems to ground itself in a model of the self that is somehow presented to us or becomes actualized in a complete and stable

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<sup>28</sup>E.g., see Gavison, "Privacy and the Limits of Law."

<sup>29</sup>E.g., see Sklansky, "Too Much Information."

form. If this is the case, the liberal model of selfhood is asocial insofar as it is not informed fundamentally by social relations but formed by itself and its own independent logic. They believe that this model of the self is too far abstracted from embodied reality to properly serve as the grounds for a philosophy of privacy,<sup>30</sup> and that the self that deserves privacy protection is one that arises from interactions between oneself and others, not something that is merely presented to us.

While Kant's insistence on the existence of the rational will, or the core of personhood, may seem fundamentally asocial, that does not have to be the case. There is space in my theory to argue that people are deserving of respect for their dignity in virtue of being a rational being even while the self is an entity that engages in and changes with social interactions. In my opinion, all that the Dignified Zone of Refuge theory is committed to is the philosophy that there is something important or valuable that the self has, i.e., its rational will, independent of the society it finds itself within, that must be respected. My theory of privacy, therefore, can be interpreted either as protecting some independent, asocial self or as protecting a self fundamentally informed by its interactions with its community.

Ultimately, I take the following theory to be both explained and defended: Morality condemns violations of privacy relevant to Fourth Amendment concerns because privacy violations are failures to acknowledge the nature of rational beings as law-givers and law-followers. In failing to respect the fact that persons are owed some zone of refuge within which they can follow the moral law for its own sake, the government denies their capacity for moral goodness. Therefore, invasions of privacy constitute a failure to treat the rational will of another as an end. This consists of a failure to show the proper respect owed to another in virtue of that person's rational nature. Therefore, a necessary part of the government respecting the dignity of its citizens consists of respecting their private

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<sup>30</sup>For an example of such a critic, see Cohen, "What Privacy Is For"; For an example of a liberal theorist that may fall victim to this critique, see Inness, *Privacy, Intimacy, and Isolation*; Or see Benn, "Privacy, Freedom, and Respect for Persons."

zone of refuge. This is why Kantian morality would deem government invasions of privacy morally impermissible.

### **3 Application of the Theory to Philosophical Problems**

#### **Concerning Covert Privacy Violations**

With my theory of privacy laid out, I now intend to analyze a problem that many Kantian privacy theories face. Kantian philosophy supports the idea of freedom of action for rational beings insofar as freedom of action is important to one being one's own sovereign. This concept of freedom of action presents itself when Kantian moral theory condemns people for failing to show the proper attitudes towards a rational being's capacity to be actuated by and act upon reasons.

An emphasis on freedom of action can create problems for Kantian privacy theories because many invasions of privacy do not seem to inhibit freedom of action. The FBI program noted earlier is one such example. If violations of privacy do not prevent rational beings from setting and actualizing their own ends, e.g., from acting in accordance with the moral law out of due reverence for it, then why are covert violations of privacy morally impermissible?

At the outset, I would like to distinguish between two types of covert privacy violations. The first entails invasions of privacy that are covert insofar as its victims do not even know that the surveillance program exists. The second consists of invasions of privacy that are covert insofar as one cannot be certain that their privacy is being invaded even if they know that such a program to invade their privacy exists and that there is some chance the program has actually invaded their privacy. In this section, I will proceed with my analysis of the former.

In answering the question of how covert violations of privacy are morally impermissible if they do not inhibit or perhaps even influence the setting and actualization of ends, one

might simply concede that, because covert violations of privacy do not exert morally impermissible outside influence upon rational beings, covert invasions of privacy are not, in fact, morally impermissible and are not, properly speaking, invasions of privacy. If the “harm” of an invasion of privacy is never felt, then is there, properly speaking, a harm?

I find the concession that covert privacy violations are not morally impermissible unacceptable. It certainly seems to me that, e.g., reading a person’s diary, whether or not the individual whose diary it is becomes aware of the reading, constitutes an immoral invasion of their privacy rights. I must therefore attempt to de-couple moral wrongness of invasions of privacy from whether or not the invasion in question empirically affects someone.<sup>31</sup>

I believe my theory, unlike most, can persuasively show why covert invasions of privacy are immoral. As previously argued, Kantian morality commands that we respect rational beings in virtue of their possessing instances of rational will. Crucially, this is not identical with the preservation of freedom *per se*. The preservation of freedom is an end that must be actualized while one’s dignity, as argued previously, is a self-existent end. Thus, the concept of respect for a Kantian conception of dignity provides an opportunity for us to claim that there is a harm in violating a person’s dignity apart from inhibiting their ability to set and actualize ends.

I will present two arguments that show that there is such a harm in covert violations of privacy apart from inhibiting one’s ability to set and actualize ends. First, I will argue that covert invasions of privacy fail to afford individuals the opportunity to take up ends as their own despite using them as a means to that end and therefore use them merely as a means. Second, I will argue that covert invasions of privacy enacted by the government stoke highly problematic attitudes that we, as people who value democratic government,

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<sup>31</sup>This project is, in part, motivated by Sklansky’s aforementioned paper. In his paper, Sklansky noted that his own Zone of Refuge theory was motivated by his discovery that the empirical evidence for “chilling effects,” i.e., inhibition of freedom of action that may arise from privacy violations, is a lot weaker than scholars generally recognize. He therefore set out to create a theory of privacy that did not center around such “chilling effects.” Cf. Sklansky, “Too Much Information.”



should be highly motivated to curb.

### 3.1 Covert Privacy Violations: Merely as a Means

My argument in this section will be that, whether or not a violation of privacy inhibits a rational being's capacity to be actuated by and act upon reasons, all covert violations of privacy necessarily entail using a person merely as a means and therefore constitutes a violation of their dignity.

The Kantian conception of respect for dignity can provide a line of reasoning that can explain why covert violations of privacy entail a lack of respect for one's capacity to set and actualize ends. Kant explains that "rational beings . . . must always be esteemed at the same time as ends, i.e., only as beings who must be able to contain in themselves the end of the very same action."<sup>32</sup> Therefore, part of not using a person merely as a means entails ensuring that the other person is afforded the capacity to conceptualize the relevant end as their own. If one does not afford the other the opportunity to take the relevant end as their own, then one displays a lack of respect for their ability to set and actualize their own ends, i.e. their rational will, and uses them merely as a means.

First, such programs take advantage of rational beings as a means to their own end (e.g., stopping crime) insofar as they are invading the privacy of rational beings in order to achieve their own end. If they were not using them as a means to that end, then there would be no reason for surveillance in the first place.

Moreover, if persons are unaware of the existence of programs that could invade their privacy without their knowledge, then they are not afforded the opportunity to take up the ends of such programs as their own. Covert privacy violators therefore refuse to appreciate the rational will of those they watch as a self-existent end.

Thus, covert violations of privacy constitute a failure to afford rational beings the opportunity to take up ends as their own despite the fact that covert invasions of privacy

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<sup>32</sup>Kant, *Groundwork of the Metaphysics of Morals*, 4:430.

entail the use of people as a means to some end (e.g., stopping crime). Therefore, covert invasions of privacy fail to show proper respect for the dignity of others even if they do not inhibit anyone's ability to set and actualize ends.

One may argue that the above conception of failing to show due reverence for the dignity of others is too broad. It seems that persons are untroublingly not afforded the opportunity to take up an end as their own even if they are being used as a means to that end frequently in everyday life. An example of this could be people-watching at a cafe, or intentionally overhearing the dramatic conversation occurring at the table next to one at a restaurant merely for the purposes of entertainment. Do such covert acts really entail an immoral invasion of privacy?

There are undoubtedly degrees to which one can violate a person's privacy. Staring at someone from the other side of Starbucks is not as egregious of a violation as intentionally eavesdropping on another so as to hear intimate details about a stranger's life.

That being said, I would argue that both constitute an improper invasion of privacy on some level. This is accommodated by my intuition that both acts are rude, or imprudent, or show a lack of respect for others as persons. This is even more the case for government programs that can invade their own citizens' privacy in ways more invasive and comprehensive than the simple examples given above. Therefore, despite the fact that there can be degrees to which a covert invasion of privacy can show a lack of respect for the dignity of another, all covert violations of privacy show that lack of due reverence insofar as they do not afford the other the opportunity to set the relevant end as their own and thereby uses them merely as a means.

### **3.2 Covert Privacy Violations: Promoting Problematic Attitudes**

Some will object to the above conception because they have the intuition that people-watching does not constitute a problematic invasion of one's privacy if done within certain contexts. I cannot at present argue against their intuitions further than I have

already done so, so I will instead pivot to my second argument as to why the government should not be allowed to perform covert invasions of privacy: allowing the government to enact programs of covert surveillance promotes attitudes of dehumanization within the government and its officials, which is a highly problematic attitude to foster.

Even if covert violations of privacy do not themselves entail a lack of respect for the dignity of others, such invasions still promote attitudes that are highly worrisome for our government to have. Sklansky argues this by pointing out “that routinely disregarding the ‘social norms’ and ‘decencies’ of privacy can lead organizations and their employees to dehumanize and depersonalize the people they search or surveil.”<sup>33</sup>

I argue that this attitude of dehumanization can develop whether or not the activity in question itself constitutes a lack of respect for the dignity of others. As Kateb notes, covert violators of privacy treat the watched “like a lab animal, a creature that excites curiosity and probably the desire for further techniques and projects.”<sup>34</sup> The mere act of watching another without their consent can lead to attitudes of dehumanization because it invites one to view the other as, e.g., an object to be studied rather than a free agent with dignity. I need not interact with them or their rational will, they are merely a data point in my investigation.

Promoting attitudes of depersonalization in the government and its officials is especially problematic “because of the tools of coercion and violence they can lawfully employ.”<sup>35</sup> First, modern technology has led to a significant increase in the capability for the government to wreak destruction. Second, if we allowed the state to engage in attitudes of mass dehumanization, we would also engender disturbing problems with regards to how we structure our society and state. Given that we, as individuals, surrender part of our

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<sup>33</sup>Sklansky, “Too Much Information,” p. 1112.

<sup>34</sup>Kateb, “On Being Watched and Known,” p. 277; Stanley Benn makes a similar point in his paper “Privacy, freedom, and respect for persons” when he notes that one may have “a prima facie claim not to be watched, at any rate in the same manner as one watches a thing or an animal. For this is to ‘take liberties,’ to act impudently, to show less than a proper regard for human dignity”; cf. Benn, “Privacy, Freedom, and Respect for Persons,” p. 227.

<sup>35</sup>Sklansky, “Too Much Information,” p. 1113.

sovereignty to the state so that the state may promote our interests, it seems that we would have a serious problem if the state displayed attitudes of dehumanization towards its own citizens by, e.g., excessively surveilling them.

Clearly, we should take significant precautions to ensure that our government does not develop attitudes of dehumanization and depersonalization towards its citizens if we value having a democratic government. Therefore, because covert privacy violations encourage the government to abstract the humanity from those it surveils, we should classify such secret invasions of privacy as immoral.

I have therefore presented two separate arguments as to why covert invasions of privacy should be condemned as immoral. The first is because they, by definition, do not afford the victim the opportunity to take up the relevant end as their own and therefore use them merely as a means, which is to disrespect their dignity. The second is because they encourage the government to adopt an attitude of dehumanization, which is highly problematic if we value preserving our democratic government. Therefore, even if covert privacy violations do not directly inhibit one's ability to exercise their rational will, they are still morally impermissible.

## 4 Conclusion

This paper established several claims. First, as evidenced by the ongoing FBI data collection program, I established that our privacy rights are not being adequately protected from covert surveillance programs in the status quo.

I argued that there are two interrelated reasons for this. First, we have thus far failed to present a prevailing theory of privacy that can adequately articulate a harm that arises merely from the act of secretly watching someone. Second, partially as a result of our failure to conceptualize such a harm, the Court has failed to articulate an understanding of the harms generated by invasions of privacy that would allow for one to challenge the

constitutionality of covert surveillance programs before a court of law. We need a theory of privacy that can not only solve issues in privacy discourse related to covert invasions of privacy on an abstract, philosophical level but also on a more concrete, legal level.

Here, I presented a theory of privacy that I showed can do just that. The Dignified Zone of Refuge model of privacy analysis can persuasively explain the harm generated by covert surveillance absent any chilling effect. This harm inherent in covert invasions of privacy should be able to meet the burden of standing in order for individuals to challenge such programs in court. I therefore put forth the Dignified Zone of Refuge theory of privacy as a contending model by which concerned individuals and the Court can analyze privacy concerns moving forward.

I do not mean to say that our work here is finished. There are clearly numerous other significant discourses in the philosophy of privacy that I have not addressed here. I hope the Dignified Zone of Refuge is up for those future challenges. Moreover, until the Court shifts its thinking about privacy significantly, our institutions will continue to fail to adequately protect our privacy. Nevertheless, I have at least established the groundwork from which we can continue to move forward in our efforts to protect our right of privacy.

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