

Review of: "The Ethics of Retraction"

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Quill R Kukla, 'The Ethics of Retraction'

Some Brief Comments

I should begin by confessing that I don't know the philosophical literature on retraction—a literature that is clearly rich and growing. I therefore learned a lot from this interesting and stimulating paper; but it is clearly all too possible that my comments on it will reflect my own ignorance rather than any problems with the paper's argument. Nonetheless, I'll offer a couple of brief comments on Kukla's account of retraction, and then suggest a comparison that might (or, of course, might not) be illuminating.

The first comment concerns the success conditions for a retraction. Kukla suggests that these include acceptance as well as uptake: "So a retraction needs uptake in order to succeed—it needs to be heard and practically recognized, just for starters. But, more strongly, it needs to be accepted by its audience as legitimate and allowable, in order for it to do its characteristic normative work" [p. 5]; and elsewhere in the paper uptake and acceptance seem to be classed together as conditions of success. But perhaps this is a bit quick, since we can distinguish three kinds of success or failure.

- We can ask, first, whether the would-be retractor succeeded in retracting the statement or offer or whatever that they seek to retract. Here uptake is certainly necessary: if I am not heard, or am not understood, by those I address, I have not retracted; I have simply tried, but failed, to retract. But acceptance is not, I suggest, normally necessary. You might refuse to accept my retraction, continue to act as if the normative status established by my original speech act still obtains, but that does not make it the case that I have not retracted: I can still say, truly, that I have retracted.
- Second, however, my aim in retracting might well have been to secure acceptance of the retraction and its normative import (though it need not have been, as Kukla notes). In that case, acceptance is of course a condition of success—but not of success in retracting. My retraction was an attempt to secure acceptance, and was therefore a failure: but it was not a failed attempt at retraction—it was a retraction that failed to achieve its immediate goal.
- Third, as Kukla again makes clear, a retraction might be (part of) an attempt at repair or restoration, and even if it is accepted it might fail to achieve or to promote that end: uptake and acceptance are not enough to secure that kind of success.

This comment concerns the logic, rather than the ethics, of retraction. Acceptance might well (at least often) be a condition of *morally* successful or permissible retraction—we might even say that sometimes I ought to retract a retraction that is not accepted; but it is not, I suggest, a condition of retraction itself.

My second comment is connected, since it concerns promises and the possibility of ‘retracting’ a promise if the promisee does not accept this. Kukla takes it that a promise is a kind of speech act that can be retracted, but also points out that I can typically free myself from a promise, and from the obligation it created, only with the promisee’s agreement. For instance, “if I promise to pick your children up after school, and then try to retract my promise, I’d better (at least) give you reasons why I am backing out, otherwise you are likely to take me as still beholden to pick up the children and transgressing an obligation if you do not” [p. 8]. This suggests to me, however, that promises are not the kind of speech act that can be retracted, just because I cannot (normally) unilaterally free myself from a promissory obligation. I can of course renege on a promise; I can be justified in breaking a promise (though I also then owe the promisee an apology, an explanation, perhaps some reparation); I can request or negotiate a release from my promise; but I cannot retract it. That is why a defendant who was sued for reneging on a promise of marriage was sued for ‘breach of promise’: he might have withdrawn, or tried to withdraw, his accepted offer of marriage, but nothing he did or said could count as retracting it—the promise remained as a promise. The promisee might agree to release him from it, but that is not a matter of allowing him to retract it: she releases him.

My (tentative) suggestion is that the law of criminal attempts might provide an interesting and instructive comparison. If I embark on a criminal enterprise—to poison an enemy, for instance, or to defraud an insurance company—I will begin with various preparatory steps, and at such an early stage it is not yet true, in either ordinary usage or in criminal law, that I am attempting to commit the projected crime; if I abandon the enterprise without going any further, I cannot be condemned either morally or legally for attempting to commit it (which is not to say that my conduct is morally or legally innocent). At a certain somewhat indeterminate point in the enterprise, however, it will be true that I am attempting to commit the crime and, if detected, I will be liable to prosecution and conviction for a criminal offence: according to English law, for instance, I reach that point when I engage in conduct that is ‘more than merely preparatory’ to the commission of the crime; according to the American Model Penal Code, when I take a ‘substantial step’ towards its commission. Perhaps, however, I am not yet detected, and decide for myself to abandon the enterprise before it is too late: I do not submit the fraudulent claim form to the insurers, or give my intended victim the drink that I have carefully poisoned. It is still true that I was attempting to commit the crime—although it is perhaps not true that I attempted to commit it—and under some legal systems I could still be convicted of a criminal attempt even though I abandoned it; under others, however, I can avert conviction by persuading the court that I abandoned my attempt voluntarily. Finally, I might complete the attempt in the sense that I take the last step that it is up to me to take to complete the crime—I post the fraudulent claim, I give my intended victim the poisoned drink; but it might then still be possible for me to prevent the completion of the crime—I can intercept the claim form, or knock the drink out of my intended victim’s hand. If I do this, we might (at a slight stretch) talk of retraction: I have retracted my would-be fraudulent claim or murderous action.

Three points may emerge from this. First, only once I have completed the attempt is there any room to talk of retraction: before that point, we can talk of abandonment, but not of retraction. Thus retraction must be of something that has been completed, that has acquired a definitive existence in the world: the attempt was completed, the offer made, the statement uttered, and so on. Second, the very possibility of retraction is then contingent on the world: perhaps I am too late to

retrieve or recall the insurance claim; perhaps the victim drinks the poison before I can reach him, or I suffer a disabling accident before I can intervene; perhaps I am disabled or prevented from retracting my offer or my statement. Third, that is why my retraction, even if it succeeds, certainly cannot, as Kukla points out, restore the world to the way it was (whether factually or normatively) before I spoke or acted: it remains true that I made the offer or the statement, that I made the attempt—even if it is also now true that I successfully prevented my speech or action from having the significantly harmful effects that it would have had if it was not retracted.

I honestly don't know whether this comparison is useful, or obfuscatory.

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